

FAIR WORK WALES

Report of the Fair Work
Commission

March 2019

FAIR WORK WALES

Foreword from the Chair of the Commission

I was appointed in late July 2018 by the then First Minister, Carwyn Jones AM to chair an independent Fair Work Commission. The task of this Welsh Government ministerial body was to make evidence-based recommendations by March 2019 to promote and encourage fair work in Wales.

During the late summer of 2018 other Commissioners were appointed. They are independent open-minded people, not representative of particular interests, but combining considerable relevant knowledge and diverse experience: Sharanne Basham-Pyke, Professor Edmund Heery, and Sarah Veale CBE.

The fact that we completed our work in six months owes much to the preparedness of the Commissioners to devote much more time and energy to their part-time role than I originally led them to believe would be required. I am very grateful to them for this. It reflects also the valuable work of our Independent Expert Advisor, Professor Alan Felstead who provided detailed briefings for the Commission and played a key role in analysing the responses to our five-week Call for Evidence, made in October 2018. We were assisted by a small secretariat, headed by Marion Stapleton. On behalf of the Commission, I would like express our thanks to her, Audrey Johns and Huw Griffiths for their support.

Our deliberations on defining fair work and identifying levers for promoting it in Wales drew on work begun within a social partnership Fair Work Board as well as our own expertise. We were informed further by the large number of responses to our Call for Evidence, together with the many reports and publications identified in those responses and otherwise, and by the wide-ranging consultation and engagement meetings the Commission held throughout the process. We have sought to develop achievable recommendations which provide a practical way forward to deliver Fair Work Wales.

The Welsh Government has recognised that fair work can help achieve a stronger, modernised, more inclusive economy. Fair work accords with long-established cultural traditions in Wales of social solidarity and community cohesion. It can assist in addressing inequality, reducing poverty and promoting well-being. Fair work contributes to national growth and prosperity.

I am pleased to present this Report to the First Minister, Mark Drakeford AM, and hope that our work will provide Welsh Government with a crucial staging post in achieving its fair work ambition.



Professor Linda Dickens

Chair

Fair Work Wales

Report of the Fair Work Commission

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Terms of Reference

On the basis of evidence and analysis the Commission is to make recommendations to promote and encourage fair work in Wales.

The Commission will develop indicators and measures of fair work and identify data sources to help monitor progress. It will consider whether measures to promote fair work currently available to the Welsh Government could be taken further and identify what new or additional steps might be taken, including new legislation, and make recommendations.

The Commission is to report by March 2019.

Recommendations

Part 1 - Fair Work Wales

1. We recommend fair work be seen to be a responsibility of all Welsh Government Ministers and officials.

Part 2 - Defining Fair Work

2. We recommend the following definition and characteristics of fair work should be adopted and used across the Welsh Government and in its promotion of fair work. The definition and characteristics should be considered as a piece.

Definition: Fair work is where workers are fairly rewarded, heard and represented, secure and able to progress in a healthy, inclusive environment where rights are respected.

Characteristics within the definition: Fair reward; employee voice and collective representation; security and flexibility; opportunity for access, growth and progression; safe, healthy and inclusive working environment, legal rights respected and given substantive effect.

The promotion of equality and inclusion is integral to all six characteristics.

Detailed indicators of the fair work characteristics are provided. These will need to be nuanced to take account of different contexts.

3. We recommend Welsh Government engages with its social partners and wider stakeholders to identify what is appropriate and achievable in different contexts in relation to the indicators of fair work characteristics and to provide sustainability to the definition over time. This may be done within the proposed Fair Work Forums.

Part 3 - Legislating for Fair Work

3.1. Acting within competence

4. We recommend Welsh Government explores and takes all opportunities within its legislative competence to take forward fair work.

Our recommendations relating to particular areas where the Welsh Assembly has competence are:

Equality Act

5. (a) Welsh Government should accept the Equality and Human Rights Commission (EHRC) recommendation to improve the specific duties under the Equality Act (Statutory Duties) (Wales) Regulations 2011.

(b) Welsh Ministers should make connections between the Equality Objectives which they set themselves under Government of Wales Act 2006 s 77 and fair work as set out in this Report.

Well-being of Future Generations (Wales) Act 2015

6. (a) the well-being objectives of public bodies set under the Well-being of Future Generations (Wales) Act 2015 should incorporate fair work as defined by this Commission.

(b) the Fair Work Commission's definition and characteristics of fair work should inform the way in which the well-being goals are developed and operated in practice and the work of the Future Generations Commissioner.

(c) discussions should take place with the Future Generations Commissioner with a view to implementing Recommendations 6 (a) and (b).

Agriculture Sector (Wales) Act 2014

7. (a) in its current consideration of modernising the Agriculture Wages Orders the Agricultural Advisory Panel should take full account of this Commission's definition and characteristics of fair work, including the integrated equality requirement, and serious consideration should be given to ending the lower rate for those below age 25.

(b) The Agricultural Advisory Panel should be asked to investigate and report on the feasibility of paying the Welsh Living Wage (equating to the Real Living Wage) in Welsh agriculture, phased in over a three year period.

Regulation and Inspection of Social Care (Wales) Act 2016

8. Following the imminent review of the Regulations, Welsh Government should assess whether the approach of linking the delivery of quality public services to the well-being of workers, in order to make an intervention, is one which might be used in other regulated sectors.

Government of Wales Act 2006

9. Welsh Government should explore further opportunities to promote fair work using its power under section 60 of the Government of Wales Act (and other legislative powers to issue advice and guidance) to further social and economic well-being in Wales.

10. (a) we recommend steps be taken to put social partnership on a firmer statutory basis in order to embed social partnership more securely and provide assurance of continuity. In the process of doing this the nature, role and Welsh Government expectations of social partnership could be clarified; existing arrangements for social partnership and social dialogue reviewed and where necessary enhanced or extended.

(b) our observations and recommendations should inform the development of the proposed Social Partnership Act.

3.2. Influencing in the non-devolved sphere

11. Where it lacks legislative competence the Welsh Government should use its influence to pro-actively press the UK Government for legislation conducive to furthering Fair Work Wales. To this end Welsh Government should allocate clear and appropriate responsibility for such engagement and develop a view of the employment and industrial relations legislation which it would wish to see.
12. We recommend the Welsh Government seek to ensure there is no weakening of existing employment rights following withdrawal from the European Union; that new Trade Agreements protect and not ‘trade away’ employment standards and that UK employment legislation keeps pace with progressive future developments in EU legislation supportive of fair work.

3.3. Effective enforcement of current legal rights

13. We recommend Welsh Government take the opportunity provided by the UK Government’s forthcoming consultation on proposals for a single labour market enforcement agency to:
 - i. Press for well resourced, more comprehensive, pro-active state inspection and enforcement with deterrent penalties;
 - ii. Encourage the UK Government to consider the desirability and feasibility of a specific focus on enforcement arrangements in Wales within the overall UK agency enforcement structure; and
 - iii. Encourage the UK Government to develop a wider notion of an ‘unfair practice contact point’ as part of its consultation.
14. We recommend Welsh Government develop and implement a strategy to improve the effectiveness of existing rights enforcement in Wales. In keeping with recommendations 15-17, components of such a strategy should include:
 - i. Improving knowledge of rights;
 - ii. Increasing workers’ ability to pursue their rights;
 - iii. Measures to increase the detection of non-compliance and its consequences.

(i) improving knowledge of rights

15. (a) We recommend Welsh Government bring together statutory provisions (whether in employment law, company law, equality law or other) which confer rights or impose obligations relevant to fair work as defined by the Commission. This should be accompanied by a short easy-read guide.

(b) We recommend a targeted ‘know your rights’ campaign making full use of social media as well as other channels to increase awareness and knowledge of rights and how to seek redress.

(c) We recommend awareness of rights among prospective workers is increased through, for example Careers Wales, Skills Gateway, and through work-based learning providers in relation to apprentices.

(ii) increasing workers’ ability to pursue their rights

16. We recommend Welsh Government assist workers to enforce their rights by facilitating the availability of, and access to, advice and support, for example through funding support for advisory and support services.

(iii) measures to increase the detection of non-compliance and its consequences.

17. (a) We recommend Welsh Government (through the Office for Fair Work) seek out opportunities to support and enhance the enforcement role of UK enforcement agencies in Wales. This would include encouraging the involvement of trade unions, civil society bodies and employers.

(b) We recommend that, if a UK-wide whistleblowing point of contact is not created, Welsh Government undertake a feasibility study on how it might be provided within Wales.

(c) We recommend Welsh Government co-ordinates information about organisations in Wales which have and have not complied with their statutory obligations, making this information easily accessible by the public.

Part 4 - Promoting Fair Work through Economic Incentives

18. We recommend that:

- i. Public money should be provided only to organisations fulfilling, or working towards fulfilling our definition and characteristics of fair work (organisations meeting the Fair Work Wales standard);
- ii. Inward investors should be fair work organisations;
- iii. Infrastructure projects and large capital investment projects should be Fair Work Wales projects;
- iv. The focus and priorities of public sector contracting should shift towards social value, including fair work.

Economic Contract

19. We recommend that, in keeping with its stated intention, Welsh Government adopts the Fair Work Commission’s definition of fair work in relation to the Economic Contract/Calls for Action/Economy Futures Fund.

20. We recommend coverage of the Economic Contract should be extended to finance provided from the Development Bank of Wales and Business Wales (with the objective of assisting employers to meet fair work requirements rather than seeking to exclude them from funding).

Code of Practice: Ethical Employment in Supply Chains.

21. We recommend that the Fair Work Commission's definition and characteristics of fair work be adopted and given prominence within the *Code of Practice: Ethical Employment in Supply Chains*.
22. With regard to the *Code of Practice: Ethical Employment in Supply Chains*, we further recommend:
- i. Signing up to the Code should be made a requirement of Welsh public bodies and those organisations in receipt of public funding;
 - ii. More directed action should be taken to encourage a greater number of businesses not in receipt of public funding to sign up against set targets;
 - iii. Those signing up to the Code should be required to demonstrate how and what consideration has been given to paying the Welsh Living Wage, with an action plan to achieve this;
 - iv. Welsh Government should ensure sufficient resourcing to provide effective implementation and monitoring of the Code;
 - v. Signatories to the Code be required to be open to audit and monitoring (including provision of data) with an independent element. This is particularly important with long term supply contracts.

Procurement

23. We recommend that fair work as defined by the Commission is a guiding principle of the wider review into the use of public funding which is being developed.

Other

24. We recommend Welsh Government, through monitoring experimentation elsewhere and/or through pilot schemes in Wales, ascertains what works in terms of other ways in which public funding can promote fair work (for example through rates or tax incentives).

Part 5 – Promoting Fair Work through Trade Unions and Collective Bargaining

25. We recommend Welsh Government take all measures possible within its sphere of competence to support and promote trade unions and collective bargaining.
26. We recommend that Welsh Government state a public policy commitment to promoting trade unions and collective bargaining.

27. We recommend that Welsh Government continues its investment in Wales Union Learning Fund.

Part 6 - Promoting Fair Work through Other Measures

Spreading awareness and ownership of fair work

28. We recommend that Welsh Government develop and resource a communications and marketing strategy to create widespread awareness of the fair work agenda and generate enthusiasm for it.
29. We recommend that Welsh Government work with key stakeholders, allies and advocates of fair work to publicise and ‘sell’ the concept of Fair Work Wales, fostering active interest and engagement of the people of Wales in the fair work endeavour.

Showing how fair work matters

30. We recommend that evidence of macro and micro level benefits of fair work, and of the negative organisational and societal impacts of unfair work, is marshalled and publicised. Where evidence is absent for Wales it should be commissioned. This might include research at different levels of aggregation to demonstrate what works, and the gains which might be secured in particular contexts.

Leading, influencing and inspiring

31. We recommend that Welsh Government and public sector bodies ensure they are actively and visibly Fair Work Wales organisations.
32. We recommend that Welsh Government takes every opportunity to use its influence to further promote and advertise fair work. We recommend this include:
- (a) using its convening power to bring together fair work allies to create a lasting movement towards fair work. Allies here could include trade unions and other civil society organisations, responsible businesses and independent experts.
 - (b) enlisting the support and influence of willing employers to increase the visibility and desirability of fair work within the different business communities. This might include identifying Fair Work Wales Champions or Ambassadors.

Assisting and supporting willing employers

33. We recommend that Welsh Government, in consultation with its social partners, take the steps we indicate to assist and support willing employers to embody the characteristics of fair work in their organisations.

34. We recommend Welsh Government invite Acas, EHRC and other relevant bodies to work together to map their advice onto the characteristics and indicators of fair work elaborated in Part 2 of this Report. The aim would be consolidation and simplification of appropriate advice and signposting clear pathways to assistance, including online resources.

Part 7 - Taking Fair Work Forward: Building Capacity, Institutions and Mechanisms

There needs to be capacity for carrying the fair work agenda forward as the Fair Work Commission ends. To ensure meaningful progress and delivery existing institutions and mechanisms should be enhanced and additional mechanisms created. There are inevitably budget and resource implications of a number of these recommendations. Without them, however, there is a risk that fair work as a necessary component of Wales as a fair work nation will be simply an expressed aspiration; an initiative without follow through or impact.

35. We recommend the creation of an adequately funded and appropriately staffed Office for Fair Work. This dedicated resource within Welsh Government is a necessary linchpin for fair work.
36. We recommend Welsh Government, working within social partnership, explores the feasibility of Fair Work Wales Forums, with a view to initiating, fostering and supporting these.
37. We recommend a start be made by setting up a Fair Work Wales Forum in Social Care.
38. We recommend a public-facing Fair Work Wales standard be developed based on the indicators of fair work characteristics set out in this Report. This should be promoted actively by Welsh Government and reinforced through a form of accreditation. Tailored Fair Work Wales standards, reflecting context, should be developed through a process of multi-stakeholder social dialogue.
39. We recommend a (virtual) Fair Work Wales Observatory is set up to make available additional capacity and expertise in carrying fair work forward.
40. We recommend Welsh Government establish a Fair Work Wales Fund, open to bids from civil society organisations and trade unions.

Part 8 - Measuring and Reporting Progress on Fair Work

Reporting on implementation of the Commission's recommendations

41. We recommend a report setting out progress on implementation of the Fair Work Commission's recommendations should be presented no later than six months from the publication of this Report and at regular intervals thereafter.

Reporting Progress on fair work

42. We recommend that Ministers be required to report internally on a regular basis on how fair work is being advanced within their area. This reporting should inform an annual Fair Work Wales Report published by Welsh Government.

Data availability and collection

43. We recommend that the Technical Annex to this Report, prepared by the Commission's Independent Expert Advisor, forms a starting point for discussions on a data infrastructure plan and data collection. Such discussions should involve the Office for Fair Work, the Chief Statistician and other key Welsh Government data stakeholders such as those in the National Survey for Wales data collection team and those responsible for tracking progress against the well-being indicators/milestones. Such discussions can embrace detailed consideration of recommendations 44-47 below.
44. In relation to general surveys we recommend:
 - (a) Welsh Government continue to boost the Welsh sample size of surveys which produce data of relevance to tracking fair work whenever the opportunity arises.
 - (b) The opportunity for engagement and consultation on future UK data collection exercises in this area should be pursued, so that the Welsh definition and characteristics of fair work feature more strongly and disaggregation of the resulting data is possible.
 - (c) Relatedly we recommend Welsh Government encourage the Office for National Statistics to recognise the fair work data requirements of the devolved administrations.
45. We recommend a dedicated Welsh survey of employers be designed to track the characteristics of fair work as defined in this Report. This Fair Work Wales Survey should be administered on a regular periodic basis. In the first instance a survey to provide a baseline is required.

46. We recommend the following in respect of the national indicators and national milestones:
- i. The two-thirds of the median UK wage indicator is replaced with one focused on the proportion of workers in Wales paid at or above the Welsh Living Wage;
 - ii. The job satisfaction indicator is removed;
 - iii. Trade union recognition for collective bargaining is included as a national indicator;
 - iv. The Welsh Living Wage and collective bargaining indicators are adopted as national milestones. We support the proposal to make gender pay gap monitoring a national milestone and welcome the feasibility work on extending the milestone to disability and ethnicity pay differences.
47. We recommend that fair work data are collected regularly in the National Survey for Wales, reflecting the Commission's definition of fair work. In conjunction with recommendation 45, this will provide new and periodic survey data covering both worker and employer perspectives.
48. We recommend that key administrative data are collected systematically by the Office for Fair Work to help monitor progress and to inform annual reporting on Fair Work Wales.

Timing

The Fair Work Commission has been concerned to develop recommendations which are realistic and achievable. Some can and should be implemented at once and work can be started on others. Within *six months* of the publication of this Report therefore, Welsh Government should be able to report progress (recommendation 41).

Welsh Government will wish to set its own timescales for the implementation of the recommendations it accepts. However we suggest that six recommendations are accorded priority for immediate implementation. These are: 1, 2, 10b, 26, 35, 42

These six recommendations provide the opportunity for Welsh Government to convey its commitment and set the necessary direction and foundation for driving fair work forward. For reasons outlined in the Report, establishing the Office for Fair Work (R35) is key to the successful implementation of many other recommendations.

There are other recommendations which can be started within the first six months but may be ongoing. These are: 3, 4, 5, 6c, 10a, 11, 12, 19, 21, 28, 31, 34, 36, 43

Recommendation 13 is time specific - relating to current or imminent UK consultations - and so needs to be acted upon within the consultation timetable.

THE REPORT

Part 1

Fair Work Wales – A Piece in a Bigger Jigsaw

In his speech to the Welsh Labour Party Conference in March 2017 the then First Minister Carwyn Jones said ‘I want to make Wales a fair work nation’. This is a nation ‘where everyone can access better jobs closer to home, developing skills and careers; where we can all expect decent, life enhancing work, without exploitation or poverty; where we all build prosperity and all share in that prosperity’. This was echoed in *Prosperity for All: Economic Action Plan* published by the Welsh Government in September 2017.

This ambition was broadened in Mark Drakeford’s First Minister campaign manifesto when he said ‘I want us to use every day we have, and every lever we have, to make Wales a more equal, fair and just society’.

Fair work – the central focus of the Fair Work Commission - is a core element in this broader ambition. But it is one piece in a bigger jigsaw. The broad concept of the fair work nation encompasses social and welfare policy, economic and industrial strategy, transport, housing and education etc. Locating fair work within the broader social vision embodied in the First Minister’s aim to ‘make Wales a more equal, fair and just society’ is vitally important.

Many of the areas where action needs to be taken in pursuit of the goal of the fair work nation range beyond the employment sphere. But they nonetheless interact with and affect employment. If, for instance, economic strategy does not recognise social goals it can perpetuate inequality and unfairness. Where industrial strategy focusses on volume of jobs and targets without attention to their quality, it can lead to unsustainable, unproductive, precarious work.

Government policies and institutional arrangements in a number of areas influence the way in which communities or individuals are able to participate in the labour market and help shape the nature of work and employment. Workers’ options and opportunities for fair work, and their expectations of work, can be limited or opened up by government policies in areas such as transport infrastructure, education, skills development, and the nature and operation of the tax and welfare system. The construction of labour markets and the imbalance of economic power act to shape and constrain workers’ employment choices.

The focus of the Fair Work Commission is on paid work yet engagement with the labour market is affected by the undervaluing and unequal distribution of unpaid care and domestic work. For example the availability or otherwise of good quality, affordable childcare and policies around maternity, paternity and parental rights, are important in shaping parents’ (particularly women’s) labour market participation.

Government welfare policy can help construct a labour force which facilitates poor employment practices. The ‘workfare’ approach and benefit sanctions operating in an area of job scarcity effectively can mean workers face compulsion to accept such employment rather than exercise choice¹. Unlike the post war Beveridge welfare regime, the current approach to

welfare no longer serves the wider goals of labour market regulation and preservation of labour standards. Universal Credit and the earnings threshold at which state support is withdrawn, for example, contribute to the proliferation of low hours, low pay and subsidised short hours jobs².

Employers' ability to adopt potentially exploitative ('low road') business models, or deploy employment practices which serve to entrench or perpetuate inequalities, can be facilitated or hampered by government action beyond the immediate employment sphere. Much of this relevant government action is in areas which are not devolved. The Welsh Government needs to seek to influence the UK Government's actions in these areas.

Where it has competence it needs to target the levers it has effectively. We consider that there needs to be a dedicated resource within Welsh Government to achieve this. In Part 7 of this Report we propose an Office for Fair Work be created. The Office for Fair Work will work to ensure a coherent, co-ordinated, cross-cutting, collaborative approach within Welsh government in order that all policy development, implementation and delivery has a fair work perspective and that there is monitoring and follow-through to ascertain impact in terms of fair work outcomes.

A coordinated, cross-cutting approach avoids inefficient duplication of effort or inadvertent undermining and minimises the risk of overlooking opportunities to further the fair work agenda. It maximises the potential benefits of government action. Individual programmes can be limited in what they can achieve by their size, scale and objectives. Activity across Welsh Government has to be successfully aligned. Welsh Ministers and policy officials need to appreciate how they are part of a programme to deliver fair work. Lack of joined-up government is a major barrier to delivery.

The First Minister has stated his commitment to fair work. Welsh Government will need to display a high-level of commitment to the fair work agenda and be clear about the priority attached to its delivery. We have been concerned to develop recommendations which are realistic and achievable. Implementing them and ensuring impact requires active, visible and accountable ownership and political commitment. Promoting fair work requires action beyond the scope of any single Ministerial portfolio.

We recommend fair work be seen to be a responsibility of all Welsh Government Ministers and officials [R1].

1.1. An opportunity for Wales to lead, and the need to do so

Important and often innovative initiatives have been launched in Wales. These include the Economic Action Plan – Economic Contract; the *Code of Practice: Ethical Employment in Supply Chains*; the Well-being of Future Generations (Wales) Act 2015; the Valleys Taskforce; Better Job Closer to Home and the Taking Wales Forward Childcare Offer³.

The recommendations in this Report provide an opportunity for Welsh Government to demonstrate further leadership in the promotion of fair work, for which there is a clear need.

The Welsh Government should take purposeful action within its devolved sphere and press the UK Government to take further, bolder and better action in non-devolved policy areas.

There are a number of relevant policy developments across the UK and increasing attention to issues of fair work. For example, a number of Metropolitan Mayors (e.g. Greater Manchester, Merseyside, London) and some local authorities and cities in England (e.g. Birmingham, Nottingham, Liverpool) are developing employment charters or standards⁴. Scotland has a Fair Work Convention and the Scottish Government is adopting 'Fair Work First' as a new default position in relation to public funding⁵. Importantly, the UK Government's Industrial Strategy now seeks to promote the quality of work and not just its quantity. It recently produced its *Good Work Plan*, which set out how it will implement various recommendations of *Good Work: The Taylor Review of Modern Working Practices* and of the Director of Labour Market Enforcement's *UK Labour Market Enforcement Strategy 2018/19*.⁶ There also have been modest cognate developments at UK level around a refreshed Corporate Governance Code and in relation to social value in procurement.⁷

Underpinning a number of these developments is growing concern about the quality of jobs in the UK including the growth of low paid, low skill, insecure jobs, and the consequences of this in terms of low productivity, indebtedness, inequality and in-work poverty. Considerable disparities exist between different groups in the labour market.

Wales exemplifies problems of the wider UK labour market but is also worse on some indicators. There is a clear need for Welsh Government to act. As detailed in the Appendix to this Report, productivity rates in Wales are low; 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 poor quality. In-work poverty in Wales is higher than elsewhere in the UK and projected to increase.

The wider context is challenging with continuing austerity, cuts in public sector funding and the uncertain but acknowledged adverse economic growth consequences of departing the European Union. The consequences of these wider events tend to fall disproportionately on those at the bottom of society, those already disadvantaged. They risk further increasing inequality and poverty, including in-work poverty. This unfavourable context, therefore, should not be taken as a reason for inaction. Rather it underlines the imperative for Welsh Government to carry forward the fair work agenda as a key element in Wales becoming a more equal, just and fair society.

The Welsh Government has recognised that fair work can help achieve a stronger, modernised, more inclusive economy. Fair work accords with long-established cultural traditions in Wales of social solidarity and community cohesion. Fair work can assist in addressing inequality, reducing poverty and promoting well-being. It contributes to national growth and prosperity. The recommendations in this Report provide a foundation for bolder future action.

Fair Work Wales would be an achievement to be proud of, signalling Wales as a great place to live and to work, and a great place in which to invest.

Part 2

Defining Fair Work

2.1. Our approach

The Fair Work Commission reviewed a wide range of approaches to defining and measuring ‘good work’, ‘decent work’, ‘fair work’, ‘job quality’ etc. found in academic, practitioner and policy literature. We considered the indicators identified by the Fair Work Board which preceded this Commission; definitions currently in use within the Welsh Government and the definitions and indicators of fair work proposed to us in evidence submissions. Our observations relating to data and measures for tracking fair work progress are discussed more fully in Part 8 and the Technical Annex to this Report.

In arriving at our recommended definition of fair work we sought to reflect the long established International Labour Organisation (ILO) principle that labour is not just a commodity, recognising that employment goes beyond a simple market transaction and is an important component of individual and social well-being. Further, our definition concerns itself with processual aspects around voice and with questions of choice, respect and social justice.

We attached particular importance to the purpose for which a definition is required, namely the desire of the Welsh Government to use all available levers to promote and encourage fair work. We have been concerned also to define fair work in a way which has meaning for employers and workers and thus can have traction on the ground. We sought to provide criteria against which employers can be assessed (for example in procurement decisions) and assess themselves. These concerns encouraged a practical, pragmatic approach.

We have not developed a more abstract notion of ‘fairness’ nor adopted ‘dimensions of job quality’ as in some definitional approaches. Our definition is concerned with objective rather than subjective measures, an approach recommended for example by OECD⁸. Subjective measures, such as job satisfaction scores are problematic for the current purpose. Job satisfaction scores may be increased by lowering expectations rather than improving conditions and studies show that less advantaged groups may display higher or similar satisfaction levels to those of others enjoying objectively better terms and conditions⁹.

We agree with those who submitted that fair work is multi-faceted and should not be reduced to a single dimension, for example ‘fair pay’, an approach also recommended by OECD.

It should be noted that in what follows the terms ‘workers’ and ‘employees’ are used in a general everyday way. The terminology is not intended to reflect statutory definitions and distinctions.

2.2. Definition and characteristics of fair work

We recommend the following definition and characteristics of fair work should be adopted and used across the Welsh Government and in its promotion of fair work. The definition and characteristics should be considered as a piece [R2].

Definition

Fair work is where workers are fairly rewarded, heard and represented, secure and able to progress in a healthy, inclusive environment where rights are respected.

We identify six characteristics within this definition. Tackling inequality and promoting equality and inclusion for all protected groups is integral to all six characteristics¹⁰.

1. Fair reward
2. Employee voice and collective representation
3. Security and flexibility
4. Opportunity for access, growth and progression
5. Safe, healthy and inclusive working environment
6. Legal rights respected and given substantive effect

It is important that the tackling of inequality and active promotion of equality and inclusion is seen as integral to the fair work agenda. On balance we felt that having it as a separate characteristic risked it not being regarded in this way and treated in practice as an ‘add-on’ or as tangential. In not having the promotion of equality as a separate fair work characteristic we have sought to emphasise the need for inclusion, equality and human rights issues to be integrated and mainstreamed through all six characteristics.

2.3. Indicators of the fair work characteristics

In this section we elaborate detailed aspects within the six characteristics to indicate what good practice looks like in relation to fair work employment. As we emphasise later, this sets out what might be aimed for currently. What indicates good practice in relation to fair work will evolve and greater ambition will become possible.

2.3.1. Fair reward

- Rates of pay and other terms and conditions are appropriate, commensurate with skill etc. Work is evaluated fairly, including revaluing of work generally performed by women.
- Relevant collective agreements are adhered to. Negotiated rates or industry, sector or occupational standards are followed where applicable.
- The Welsh Living Wage (equating to the Real Living Wage) provides the *minimum* wage floor for all working hours¹¹. The employer has achieved or is working towards accreditation as a Living Wage Employer.

- Enhanced contractual rates above statutory minima are paid where possible (e.g. sick pay, maternity pay, paternity pay, holiday pay).
- There is transparency in pay calculation (including bonus, holiday pay, sick pay etc) and in the method of pay determination.
- Employer demonstrates non-discriminatory pay systems and that pay and reward are equitable as between different groups (e.g. through transparent gender and ethnicity pay audits) and that there is an action plan to deliver this.
- There is transparency in pay distribution including reporting ratio of senior pay to the median of their workers' pay¹², and an action plan to address pay gaps.
- Access to a good occupational pension.
- Benefit schemes which take account of the needs of lower paid workers.

2.3.2. Employee voice and collective representation

Having arrangements in place for employee voice and collective representation is of itself a substantive characteristic of fair work and also provides a process which helps ensure fairness in the other areas. Thus recognition of a trade union for collective bargaining is both a route to, and a key indicator of, fair work.

- Arrangements are in place for employees to be involved in how their work is carried out and have the opportunity to express their views and be heard on matters directly affecting them.
- Employees know how to raise concerns about their employment and to have these listened to and addressed.
- Employees are made aware of their legal rights relating to union membership, union activity and recognition of a union for collective bargaining on their behalf. Provision is made for trade unions to access workers to enable them to make informed decisions as to these rights.
- Employees are informed of how to contact a trade union and notified of their right to be accompanied by union official (or fellow worker) in grievance and disciplinary hearings whether or not a union is recognised at the workplace.
- A trade union is recognised for collective bargaining or exceptionally, if not possible, other arrangements are in place for effective representation of employees' collective views and participation.
- Arrangements are in place to ensure under-represented groups, including those with protected characteristics, are heard.
- Employees are made aware of their right to request an information and consultation body (where the undertaking employs 50 or more) and how to trigger this.
- Managers meet regularly with union representatives (or other employee representatives) to engage in meaningful consultation on issues affecting workers.
- Worker interests are represented on the main company board.

2.3.3. Security and flexibility

(a) Income, hours and working time security

- Adequate notice is provided of work schedules, variation in hours or working time (with compensation for lack of this).
- No misrepresentation of employment status (e.g. false self-employment); no inappropriate use of umbrella companies or exploitative 'zero hours' contracts.
- Guaranteed minimum hours per week as default position, with the option for the individual to accept or not.
- Workers are provided with information and options in terms of contractual status; employer accepts obligation to offer a specified regular hours contract or a minimum/maximum hours contract to those on non-guaranteed hours after three months.
- Availability of working hours and patterns to facilitate inclusion (e.g. of disabled workers), and to accommodate the reality of workers' lives.
- Worker-centred flexibility is not 'traded' against reward or progression.

(b) Job/work security

- Adoption of best practice policy and procedures for discipline/dismissal, redundancy and redeployment and their effective implementation - since the existence of policies and procedures does not of itself guarantee fair practice.
- Employees are informed of company plans and developments which may affect them; employer consults regularly and in good time on such matters with trade union and other representatives.
- Provision of reskilling and training for change (whether technological, organisational or societal, including greater use of Welsh language); access to externally recognised accredited (transferable) skills courses.

2.3.4. Opportunity for access, growth and progression

- Opportunities are open to all to access work; for fulfilment and growth; to develop and progress; to acquire and use skills.
- Inclusive development opportunities exist which are sensitive to diverse needs
- No disadvantage is experienced in terms of opportunities for progression/career paths arising from particular contractual status or personal characteristics. Occupational segregation is addressed.
- Workers have access to training for current job, for progression and for organisational change; there is re-skilling of older and lower qualified workers.
- High quality apprenticeships are offered.

2.3.5. Safe, healthy and inclusive working environment

- Health and safety policy and measures are in place and regularly reviewed; risk assessments are undertaken.
- Worker health and safety representatives are present and regularly consulted.
- Work and job design and working environment are conducive to safety, physical and mental well-being and inclusion (for example adjustment to accommodate disabled workers).
- Working time and patterns are conducive to well-being (e.g. no excessive hours, adequate rest breaks, minimisation of high intensity work).
- All individuals are valued and treated with dignity and respect.
- Welsh language use is respected, encouraged and facilitated.
- There is a supportive approach to managing physical and mental ill-health.
- Responsibility is taken for preventing discrimination, bullying, harassment and other forms of ill-treatment.
- Appropriate policies and procedures (e.g. grievance; dignity at work, ‘whistleblowing’ etc.) are implemented by suitably trained and supported managers.

2.3.6. Legal rights are respected and given substantive effect

Not operating in compliance with legal obligations is an indicator of *unfair* work. At its extreme (e.g. modern slavery; wage theft) it also constitutes a criminal offence. Compliance with legislative labour standards/statutory employment rights (both individual and collective) and employer statutory duties is a baseline required of all employers.

- Giving substantive effect to rights means an employer does not seek to circumvent legal rights (e.g. avoiding statutory rights and benefits accorded to ‘employees’ or ‘workers’ through use of false ‘self-employment’; dismissing workers and then re-employing after a gap to prevent access to those statutory protections requiring a period of qualifying service).
- The employer attaches importance to legal rights and their application within the workplace, not relying on external enforcement; taking pro-active steps to make rights meaningful in practice.

Examples/indicators of pro-active steps to give substantive effect to legal rights and duties include:

- Developing and implementing action plans to promote equality and diversity (going beyond ‘not discriminating’). Transparency in information provision e.g. workforce data suitably disaggregated by gender, ethnicity, disability etc. with attention to how these identities can interact. Involving workers through their representatives in planning, auditing and monitoring implementation and outcomes.
- Facilitating and offering flexible arrangements in all jobs rather than waiting for an individual to exercise the statutory right to request flexibility.

- Developing from publishing a ‘modern slavery statement’ (required of large employers by Modern Slavery Act (MSA) s54) to setting down and taking actions to ensure compliance in supply chains and accepting joint responsibility for tackling infringement.
- Providing all workers on day one (and annually) with an easy-to-comprehend statement of their contractual status, terms and conditions of appointment and employment rights; information on how to seek advice and redress if necessary, including how to contact a trade union.
- Ensuring the quality and capacity of line management in the consistent application of appropriate good practice policies and procedures to give effect to the intent of employment rights.

2.4. Taking account of context

Fair work requires all six characteristics, with the integrated equality dimension. There should be no trade-off between characteristics. Their coupling is important in delivering fair outcomes. For example the interaction between the hourly level of pay and the number and security of hours, or the relationship between episodic employment (as with temporary or ‘zero hours’ contracts) and lack of employer-provided training and progression opportunities.

Becoming and being a fair work employer should be viewed as a continuous journey; a process rather than a fixed event. Thus, in respect of some characteristics, demonstrable planned active endeavour towards stated outcomes will suffice. For example, for some employers the Welsh Living Wage as the minimum wage floor will be an objective actively being worked towards, rather than currently achievable. In such cases this aspect of the fair reward characteristic would be payment of the statutory National Living Wage as a current minimum wage floor with a published plan for moving to the Welsh Living Wage.

Whilst it is important that there should be no exceptions, differences in context have to be understood and taken into account. The problems of fair work vary as does the capacity to address them. Some of the indicators within the characteristics which we have outlined have less purchase in relation to contingent employment, such as freelancers, contractors and casual workers.

The detailed requirements indicated within the framework of fair work characteristics need to be nuanced by particular industry, sector, firm and occupational characteristics. It is not a case that one size fits all. What is achievable will vary, for example in relation to a pay floor above the statutory minimum, or there may be limited opportunities to provide for skill development and progression given the size of workplace or nature of the product/service.

How firms demonstrate the characteristics indicated also can be expected to differ, for example by size. What is required for employers to display conformity to the characteristics needs to be proportional.

The nature of work is ever evolving and the external context shifting. The detailed indicators within the characteristics of fair work set out above should be expected to evolve also. For example the digital economy and the so-called fourth industrial revolution (being addressed in a Welsh Government review ¹³) present challenges but also opportunities for fair work.

2.4.1. A role for social partners and multi-stakeholder dialogue

We recommend Welsh Government engages with its social partners and wider stakeholders to identify what is appropriate and achievable in different contexts in relation to the indicators of fair work characteristics and to provide sustainability to the definition over time. This may be done within the proposed Fair Work Forums [R3].

The indicators within the characteristics of fair work, for example fair reward, may need to be pursued on a staged basis and this should be done through consultation.

There is a role here for the existing mechanisms of social partnership, for example the Workforce Partnership Council in relation to the public sector, and the Social Partnership Strategy Group for the private sector. However we consider that additional institutional arrangements would be beneficial. In Part 7 of this Report we propose that the Welsh Government, working within social partnership, explores the feasibility of Fair Work Wales Forums, with a view to initiating, fostering and supporting these. Fair Work Wales Forums should comprise employers and unions with an independent expert element, and involve other stakeholders as appropriate.

A Fair Work Wales Forum would identify what is an appropriate and proportionate expectation in relation to the detailed indicators of the recommended characteristics within its particular context. This could be regional or industry/sector based, or, for example, concerned with small firms/micro business or in relation to contingent employment.

It is difficult to reform the labour market one employer at a time. A Forum would identify particular fair work problems within, say, a particular sector or industry and help tailor specific interventions. It will help ensure ‘future proofing’ and sustainability of definition by understanding developments in the nature of work and changing workplace in that sector and their implications for the detailed characteristics of fair work.

The nature and functions of Fair Work Wales Forums are discussed further in Part 7 of the Report, along with other institutional mechanisms we are recommending.

2.5. Fair work, the self-employed and flexibility

Self-employment tends to be neglected in discussion around fair work except in the context of bogus or false self-employment, currently often linked to the so-called gig or platform economy. We received limited response to our explicit Call for Evidence question on ‘what does fair work mean in the context of genuine self-employment and how might it be supported and encouraged?’

As detailed in the Appendix, self-employment has been growing. Around 38% of job growth in Wales between 2007 and 2016 came from self-employment. There is considerable variation within this broad category. For the UK as a whole all the increase in self-employment between 1975 and 2016 was in terms of individuals without employees¹⁴.

For those performing specialist tasks (for example as consultants or IT specialists) where pay rates are high self-employment can be a positive and rewarding choice. The Skills and Employment Survey indicates that self-employment can offer advantages over working as an employee in terms of task discretion, variety, skills match and pace of work. However, self-employment conditions are often poor, with longer hours being worked and the self-employed being less well paid on average than employees. Disadvantage experienced by certain groups within the employed labour force is found also within the self-employed category. For example HMRC data indicate lower relative average earnings for women as compared to men in self-employment. Disabled workers are over represented in self-employment and found in forms of work with lower than average pay. The Appendix provides detail on these issues.

Further consideration should be given to the question of fair work in self-employment. This could be undertaken within a Fair Work Wales Forum.

Legitimate self-employment needs to be distinguished from 'bogus' or 'false' self-employment which is in effect disguised subordinate labour. This is where those whose conditions of employment are similar to employees are classified as self-employed independent contractors to avoid employer responsibilities, employment rights, social protections or tax liabilities. Although they may agree to these arrangements, for those with weak labour market power choice is not a reality. A number of court cases recently have highlighted and sought to curb abuses in this area. They have surfaced problems with the current legal framework, including 'protective gaps' previously identified by academic commentators¹⁵.

The use of self-employed labour is a way of shifting costs and risks. It is an element in achieving numerical flexibility valued by employers. Certain advantages of flexibility for employers need to be safe-guarded without undermining fair work. Advantages of numerical/temporal flexibility for employers accrue through closer matching of demand for labour and labour supply. It need not and should not also involve inferior pay and other conditions.

Supply-side explanations (worker choice) for flexible working are often forwarded although evidence suggests demand side factors (what employers offer) predominate¹⁶. As indicated earlier, the notion of choice can be problematic since it is constrained by wider factors. Flexibility can be assumed to reflect employee choice but such assumptions may be stereotypical or based on organisational myths, for example about women's preferences or ambition¹⁷. The particular form of flexibility on offer may not be what is actually required.

For example, not all flexible working is ‘family-friendly’ or serves to increase labour market opportunities for groups such as disabled workers. Flexibility for employers may mean rigidity for workers (e.g. being ‘on call’ for extended periods). Those working part-time may not be able to engage full-time with the labour market (and thus are exercising ‘voluntary choice’) but they may not be working the number or pattern of hours they would wish. Non-standard, insecure forms of work are often taken by young people. They do not necessarily provide a ‘bridge’ or stepping stone to more secure, better employment¹⁸.

Flexibility is often one sided, benefiting employers at the expense of workers¹⁹. The ‘security and flexibility’ characteristic in our definition of fair work seeks some rebalancing of this.

Part 3

Legislating for Fair Work

3.1. Acting within competence

There are limits on what the Welsh Government can do legislatively within the current devolution settlement. Section 108(A) of Government of Wales Act 2006 inserted by the Wales Act 2017 sets out the legislative competency test for Assembly legislation. The reserved powers model of devolution came into effect on 1st April 2018. It provides that everything is devolved unless it appears as a reservation. Section 7A of GoWA sets out matters reserved for the UK Government. Para 141 of the schedule ‘reserves employment rights and duties and industrial relations, except for the setting of wages for agricultural workers insofar as this is dealt with by the Agriculture Sector (Wales) Act 2014’.

Although the boundaries for action within the reserved powers model have yet to be tested, the paragraph 141 reservation is of relevance as it clearly limits the scope for recommendations on new legislation.²⁰ The Trade Union (Wales) Act 2017 which dis-applies some of the provisions of the Trade Union Act 2016 in respect of devolved public services in Wales was enacted under previous devolution arrangements.

That the UK has reserved the area of employment rights and industrial relations for itself to ensure consistency should allay some employer concern about legislation expressed to the Commission. In particular the concern was that if workers in Wales were given legal rights which would not apply elsewhere in Britain it might deter business location in Wales and/or pose difficulties for those employers who operate UK-wide.

We have stressed the desirability of adopting a holistic approach to the objective of fair work within Wales as an equal, fair and just society. This is reinforced by the fact that legislative measures in areas which do not relate to employment rights and duties or industrial relations, in the terms of the reserved powers model, nonetheless can have positive consequential or incidental effects on the promotion of fair work.

We recommend Welsh Government explores and takes all opportunities within its legislative competence to take forward fair work [R4].

Our definition of fair work incorporates areas where the National Assembly for Wales has legislative competence, including equality. We consider some of these below.

3.1.1. Equality Act

Since its inception the Welsh Government has set out a distinctive equality agenda. Under the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 the Welsh Government has the power to prescribe specific equality duties for public bodies in Wales. The Welsh Government was the first to bring in specific equality duties in order for public bodies to better perform and demonstrate their compliance with the Public Sector Equality Duty

(PSED). They go beyond what is required by the equivalent duties on GB-wide and English public bodies.

Public sector equality duties are an important feature of equality legislation. The aim is to alter behaviour prospectively, achieving a culture of compliance through self-regulation, rather than relying on enforcing rules following a breach. Although only applicable in the public sector there is evidence that PSEDs can have a wider positive effect as the processes set up to fulfil the duty spill over into, and provide templates and benchmarks for, the private sector²¹.

The Welsh Specific Equality Duties place responsibilities on the devolved public sector (listed bodies). They cover organisational objectives, strategic equality plans, engagement, assessing impact, equality information, employment information, pay differences, staff training and procurement. Public authorities are required to analyse and publish gender employment information by job, grade, working pattern, contract type and pay in order to facilitate understanding of the causes of gender pay gaps within their employment structures²².

The Equality and Human Rights Commission (EHRC) is responsible for the regulation of the PSED and the Welsh Specific Duties. In its 2018 report *Is Wales Fairer?* and in evidence to this Commission, the EHRC recommends improving the specific duties under Equality Act 2010 (statutory duties) (Wales) Regulations 2011. This concerns action by public bodies to address pay gaps and employment differences and report on progress and publish pay gap data. This recommendation is in line with this Commission's detailed characteristics of fair work (set out in Part 2). Work to improve the PSED provides an opportunity to address areas where the development of self-regulation has been slow or incomplete and to ensure robust and transparent reporting.

We recommend Welsh Government accept the EHRC recommendation to improve the specific duties under the Equality Act (Statutory Duties) (Wales) Regulations 2011 [R5a].

There is a uniquely Welsh equality duty. Under Section 77 of the Government of Wales Act 2006, the Welsh Ministers must exercise their powers with due regard for equality of opportunity for all people – not just in respect of the various protected characteristics covered by the Equality Act 2010. There is a reporting duty under the Act.

Equality considerations are integrated throughout the six fair work characteristics in our definition and it is important that Welsh Government activity in this area integrates with its activity in respect of fair work.

Welsh Ministers should make connections between the Equality Objectives which they set themselves under Government of Wales Act 2006 s 77 and fair work as set out in this Report [R5b].

We note that a review of gender and equality policies is in progress, with the report on phase 2 expected in summer 2019²³. Alignment will be necessary between the outcomes of that review and our recommendations.

3.1.2. Well-being of Future Generations (Wales) Act 2015

This is an important and innovative piece of legislation. It pre-dates the former First Minister's declared aspiration for Wales to be a fair work nation, the setting up of the Fair Work Board and then the Fair Work Commission. It is clear however that fair work is an essential element in sustainable development. This is defined by section 2 of the Act as 'the process of improving the economic, social, environmental and cultural well-being of Wales...'. In Part 1 of this Report we stressed the need for fair work to be encompassed within a broader set of economic and social objectives. This would be assisted by explicit integration of fair work within the Well-being of Future Generations Act.

The Act sets out seven well-being goals: a prosperous Wales, a resilient Wales, a healthier Wales, a more equal Wales, a Wales of cohesive communities; a Wales of vibrant culture and thriving Welsh language; and a globally responsible Wales. There is a duty on public bodies to carry out sustainable development, which includes setting and publishing well-being objectives to show how they will achieve the vision for Wales set out in the seven goals. Annual reports of progress are required.

We recommend that well-being objectives of public bodies set under the Well-being of Future Generations (Wales) Act 2015 incorporate fair work as defined by this Commission [R6a].

We recommend the Fair Work Commission's definition and characteristics of fair work should inform the way in which the well-being goals are developed and operated in practice and the work of the Future Generations Commissioner [R6b].

We have formulated the recommendations so that a change to the statutory definition of the goals as set out in Table 1 of the Well-being of Future Generations Act is not required. Currently the statutory description of the goal 'a prosperous Wales' is 'an innovative, productive and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately (including action on climate change); and which develops a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work'. 'Decent work' is a term used by the ILO although its definition is not provided within the Act itself. This facilitates alignment with this Commission's definition of fair work. Other aspects of our fair work definition can be found under other goal descriptions in the Act, for example 'healthier Wales' and 'a more equal Wales'.

In the longer run the words 'fair work' might be incorporated within the statutory definitions. Meanwhile we feel that in practice any confusion which potentially might be caused by use of different terminology can be avoided, not least since the term 'fair work' is already being

used in practical guidance issued by the Commissioner. It is found, for example, in the ‘journey trackers’ which were out to consultation at the time of writing²⁴.

Currently the tracker relating to ‘a prosperous Wales’ has a section headed ‘Fair Work’. Similar sections could be developed in relation to the other well-being goals, such sections drawing on the Fair Work Commission’s definition and characteristics of fair work. This would be in keeping with the need for an integrated approach to the well-being objectives, one of the ‘5 ways of working’ promoted by the Well-being of Future Generations Act as part of the sustainable development principle.

It is important that the goals and processes for achieving fair work and the demands of the Well-being of Future Generations Act well-being goals are aligned. Duplication and mixed messaging needs to be avoided. It would be counter-productive if the pursuit of Fair Work Wales were to be seen simply as layering more and potentially conflicting processes, goals and demands on the public bodies covered by the Act.

We are recommending that fair work be integrated into the operation of the Well-being of Future Generations Act and thus into the work of the Future Generations Commissioner. However we are **not** proposing that carrying forward the fair work agenda should rest solely or mainly on the Future Generations Commissioner, whose remit already appears wide. There may however be some resourcing implications.

Structured interaction and co-operation will be required between the Office of the Future Generations Commissioner and the Office for Fair Work.

We recommend discussions take place with the Future Generations Commissioner with a view to implementing Recommendations 6a and 6b [R6c].

Incorporating the Commission’s definition of fair work into the well-being goals will have implications for the measures currently used to track progress and reporting on these goals. We discuss this in Part 8 of the Report and the Technical Annex.

3.1.3. Agriculture Sector (Wales) Act 2014

In the agriculture sector particular arrangements apply under the Agricultural Advisory Panel for Wales (establishment) Order 2016 made under the Agriculture Sector (Wales) Act 2014. Annual Agricultural Wages Orders provide legally enforceable minimum rates of pay and allowances for the sector and specify various terms, for example relating to sick pay, holidays and time off. There is a statutory sub-committee on skills development and training²⁵. Features of the Panel, which brings together unions, employers and independents, and its operation have relevance for other sectors.

Scotland also has an Agricultural Wages Board but Wages Councils elsewhere and in other industries (including hairdressing, retail and hospitality) were abolished by the UK Government. Current devolved arrangements make it very unlikely that establishing similar bodies on a statutory basis in Wales would be possible.

We note from its latest Annual Report that the Panel is considering how to modernise and clarify the Agriculture Wages Orders, including the continuing appropriateness of the current grading system. We understand that the Scottish Agricultural Wages Board sets a single minimum hourly rate for all workers.

We recommend that in its current consideration of modernising the Agriculture Wages Orders the Panel should take full account of this Commission’s definition and characteristics of fair work, including the integrated equality requirement, and that serious consideration should be given to ending the lower rate for those below age 25 [R7a].

Agriculture is an important sector in Wales (see Appendix). It is a sector beset by problems, particularly in the light of the UK’s withdrawal from the EU, including labour and skill shortages. The Agricultural Advisory Panel has identified the need for a well-trained and motivated workforce. Adopting the fair work agenda can assist in achieving this.

To date the Panel has recommended rates of pay which at the bottom of the scale do not exceed the National Minimum Wage/National Living Wage.

The Commission recommends that the Agricultural Advisory Panel be asked to investigate and report on the feasibility of paying the Welsh Living Wage (equating to the Real Living Wage) in Welsh agriculture, phased in over a three year period [R7b].

3.1.4. Regulation and Inspection of Social Care (Wales) Act 2016

Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017.

These Regulations have been issued to improve service standards and delivery. They concern contract choice for domiciliary care workers (non-guaranteed hours or specified hours), and ensuring transparent adequate travel time for carers between appointments to avoid ‘call clipping’ (travel needs cutting short care time).

This approach recognises the important principle that good quality service provision and delivery is undermined by poor employment conditions and arrangements experienced by the workforce responsible for providing that service.

A review of the impact of this legislation was indicated for later in 2019.

We recommend that, following the imminent review of the Regulations, Welsh Government should assess whether the approach of linking delivery of quality public services to the well-being of workers, in order to make an intervention, is one which might be used in other regulated sectors [R8].

We consider the social care sector also in Part 7 of this Report.

3.1.5. Government of Wales Act 2006

Under section 60 of the Government of Wales Act 2006 Welsh Ministers may do anything which they consider appropriate to achieve any one or more of the following objectives: the promotion or improvement of the economic well-being of Wales; the promotion of the social well-being of Wales and, thirdly, the promotion or improvement of the environmental well-being of Wales.

The provision was used, for example, in relation to issuing guidance to public bodies on the approach they should take when proposing to enter into, or extend, contracts for the provision of service in order to avoid a ‘two tier’ workforce where new employees have less favourable terms and conditions to transferred employees²⁶. Public bodies are required to take the guidance into account.

We recommend that the Welsh Government explore further opportunities to promote fair work using its power under section 60 of the Government of Wales Act (and other legislative powers to issue advice and guidance) to further social and economic well-being in Wales [R9].

Social partnership

The Government of Wales Act 2006, section 75 requires the Welsh Ministers to make a scheme setting out how they propose in the exercise of their functions to take account of the interests of business.

‘Business’ here is widely defined ‘to include all individuals and corporate bodies that carry out a business with the aim of generating a profit including those operating in the social enterprise sector and those associations that represent such individuals and corporate bodies; and those organisations that represent individuals that participate in the creation of that profit, including trade unions’.

This Business Scheme sets out the ‘broad principles and shared values that will govern the relationship between the Welsh Ministers and the social partners in Wales’. Social partners are defined as ‘business and employer associations, trade unions and the members they represent’. In practice, however, we found the term is sometimes used more loosely to cover other stakeholders. The Business Scheme comes under regular review. The latest review was laid before the Assembly in April 2018. A number of recommendations in that Review have yet to be taken forward.

Although the statute requires a Scheme, the concept and institutions of social partnership which have been developed and operate in Wales are not underpinned by statute.

The Commission views tripartite social partnership and wider social dialogue as important in driving forward the fair work agenda. **We recommend that steps be taken to put social partnership on a firmer statutory basis in order to embed social partnership more securely and provide assurance of continuity. In the process of doing this the nature, role and Welsh Government expectations of social partnership should be clarified;**

existing arrangements for social partnership and social dialogue should be reviewed and where necessary enhanced or extended [R10a].

The Principles and guidance on the appropriate use of non-guaranteed hours arrangements in devolved public services in Wales is one example of social partnership agreement. The principles and guidance published by the Welsh Government in September 2016 were developed by the Public Services Commission in social partnership working with the Workforce Partnership Council. Evidence to the Commission suggested implementation has been uneven.

It is important that agreements reached through social partnership are implemented. This may require greater clarity about the authority of social partnership bodies and clearer responsibility and accountability placed on those tasked with implementation.

Further, measures could be taken to ensure there is structured input from representatives of workers on bodies whose functions relate to work and the economy but where such input currently appears to be lacking. Examples include Public Services Boards and Regional Skills Partnerships. The role of such representation would be to provide a perspective to inform deliberations.

The First Minister has announced his intention to introduce a Social Partnership Act²⁷. We have not been provided with any detail of what this might contain. **We recommend that our observations and recommendations inform the development of the proposed Social Partnership Act [R10b].**

3.1.6. Other

The National Assembly for Wales now has legislative competence for the licensing regime for taxis and private hire vehicles. Licensing regulation in this and other areas may provide a route for addressing certain unfair work practices.

Welsh Ministers now have a range of economic development powers under different pieces of UK and Welsh legislation. Given the contribution which fair work can make to business and competitiveness, the promotion of fair work should be a consideration in the use of those powers.

3.2. Influencing in the non-devolved sphere

Where it lacks legislative competence the Welsh Government should use its influence to pro-actively press the UK Government for legislation conducive to furthering Fair Work Wales. To this end Welsh Government should allocate clear and appropriate responsibility for such engagement and develop a view of the employment and industrial relations legislation which it would wish to see [R11].

Exercising influence on the UK Government should be done pro-actively as well as in response to invitations to contribute to specific consultations on legislative or other proposals. This work could be supported by expert advice from the proposed Fair Work Observatory

working with the Office for Fair Work which would have responsibility for engagement. These proposed institutions are discussed in Part 7 of this Report.

In keeping with our terms of reference we are not seeking to set out a UK legislative agenda which could underpin and promote fair work. However, in developing its position in relation to UK legislation, Welsh Government can take account of the characteristics of fair work defined in this Report; relevant recommendations from recent Welsh Government inquiries; applicable international standards, for example those of the ILO, and relevant academic and policy research.

The Commission's definition and characteristics of fair work set out in Part 2 of this Report, and our elaboration of indicators in relation to fair work, contain measures which could be reflected, underpinned and generalised through UK legislation. These could inform the approach of the Welsh Government in what it might request from the UK Government. Among other measures which it might request are: minimum guaranteed hours as the default position; no misrepresentation of employment status; an employee's right to be offered contractual choice; employer provision of desired flexibility (not simply an individual 'right to request'); transparent and robust workforce reporting requirements; access rights for trade unions; support for the extension of collective bargaining; worker interests represented on company boards²⁸; lead company joint liability for rights infringement by an organisation in its supply chain.

There are existing proposals for UK legislative change from within Wales which could be forwarded. For example the recommendations in *Work it Out: Parenting and Employment in Wales* relating to improvements around maternity rights, shared parental leave and gender pay gap reporting²⁹.

International standards, for example those set by the ILO and the United Nations, provide reference points for what might be asked of a UK Government. The ILO Conventions and UN goals can inform policy development within Wales (as used in guidance for the *Code of Practice: Ethical Employment in Supply Chains*) and provide a benchmark against which current and proposed UK legislation may be judged and found wanting.

Comparative research is also useful. For example, detailed cross-country comparative research indicates how the organisation of work and legal regulation in France and Norway but lacking in the UK serves to avoid problems of insecurity in working hours and employment experienced in the same occupations in Wales³⁰. Other countries face similar challenges to those in the UK, for example the growth of 'platform work', and debates and responses from other jurisdictions can be instructive³¹.

In Part 1 of this Report we noted that Fair Work Wales is but one piece of a much bigger jigsaw to achieve the declared aim of a more equal, fair and just society. Given this, we would draw attention to the 2018 report of the IPPR Commission on Economic Justice – *Prosperity and Justice. A plan for the new economy*³². There are some gaps in its proposals, for example there is little on welfare reform or the need to rethink the organisation and

distribution of work³³. However it sets out a useful 10 point plan for achieving prosperity and justice and includes employment law measures within a comprehensive and integrated programme of reform across the UK economy.

There is an opportunity currently for Welsh Government to input into UK legislative development. The UK Government is considering recommendations for legislation from the Director of Labour Market Enforcement. The latter include imposing joint responsibility (not joint liability) in supply chains and the power to embargo goods supplied by a non-compliant sub-contractor. The UK Government has indicated that it will accept the first of these. There are also some proposed measures relating to rights enforcement which we consider below.

The UK Government's *Good Work Plan* published on 17 December 2018 outlines proposals for legislation in response to *Good Work: The Taylor Review of Modern Working Practices* and the *UK Labour Market Enforcement Strategy 2018/19*. A number of useful measures are proposed with worthwhile aims. It claims that this 'cements the UK's status as a world leader in workers' rights'. If indeed this is its aspiration there is clear scope for Welsh Government to exercise some leverage.

Some observers see the measures proposed by the Taylor Review to address acknowledged problems for workers in the so called 'gig economy', which are mostly acted upon in the *Good Work Plan*, as falling short of what is required and there has been learned criticism of the approach taken³⁴. Useful alternative and additional proposals for UK legislation relating to this and other employment issues have been made by a number of bodies and expert commentators. These, together with the sources indicated above, could inform the Welsh Government's engagement with UK Government³⁵.

A range of employment rights given effect in UK legislation derive from EU legislation. These include rights relating to equality and protection against discrimination; parental rights; paid annual leave; health and safety, including statutory limits on working time; information and consultation of employees; acquired employee rights on transfer of undertakings. Between 1979 and 1997 EU employment law constrained the UK domestic de-regulation agenda and required the government to take legislative steps it would rather have avoided, particularly in areas relating to equal pay and sex discrimination³⁶. The European Court of Justice has played an important direct and indirect role in shaping UK case law. As well as exerting influence on the UK Government for improved legislation where appropriate, therefore, it is important to safeguard against deterioration in current provisions.

We recommend the Welsh Government seek to ensure there is no weakening of existing employment rights following withdrawal from the European Union; that new Trade Agreements protect and not 'trade away' employment standards and that UK employment legislation keeps pace with progressive future developments in EU legislation supportive of fair work [R12].

3.3. Effective enforcement of current legal rights

We noted in Part 2 that not operating in compliance with legal obligations is an indicator of *unfair* work. At its extreme (e.g. modern slavery; wage theft) it also constitutes a criminal, rather than civil, offence. Compliance with labour standards, individual and collective statutory employment rights and employer statutory duties is a baseline required of all employers.

Ensuring employer compliance with existing rights and duties offers basic protection to workers, adjusting the imbalance in economic power. It also creates a level playing field for employing organisations, preventing undercutting and unfair competition by unscrupulous employers and a ‘race to the bottom’.

Some evidence submissions, including from employer bodies, argued that existing legislation needed to be more effective in practice and to be properly enforced to ensure this level playing field. Part of supporting willing employers to be Fair Work Wales organisations is ensuring they do not face unfair competition from employers who wilfully do not comply.

Statutory rights and protections are of limited use when they are not enforced, when access to justice is constrained and where remedies are effectively denied. Although enforcement is not devolved, there are steps which Welsh Government might take to influence the UK Government in relation to effective enforcement and there are also measures within Welsh Government competence.

3.3.1. Influencing UK Government on enforcement

The UK Government has announced a forthcoming consultation on ‘proposals for a single labour market enforcement agency’³⁷.

Details of the consultation are awaited. At present it appears that the focus is on further integration of the existing limited state enforcement overseen currently by the Director of Labour Market Enforcement³⁸ and the provision of ‘a single point of contact for individuals and employers’ to ‘better ensure that vulnerable workers are more aware of their rights and have easier access to them and that businesses are supported to comply’³⁹.

This proposal would fall far short of wider state enforcement of rights by a general labour standards inspectorate/agency of the kind found in other western European countries. A general labour inspectorate has been advocated by various commentators over the years because of the range of advantages such an approach offers⁴⁰. Such an enforcement agency – with adequate resources and powers - would provide better fit with the Fair Work Wales agenda. Effective agency enforcement offers better protection for workers and more potential for structural, organisational change than the individualised, complaint-based enforcement model of the Employment Tribunal system. It also more effectively addresses ‘level playing field’ concerns, assisting proactive improvement through monitoring and inspection and not simply providing individual redress for successful complainants.

We recommend Welsh Government take the opportunity provided by the UK Government’s forthcoming consultation on proposals for a single labour market enforcement agency to [R13]:

- i. Press for well resourced, more comprehensive, pro-active state inspection and enforcement with deterrent penalties;**
- ii. Encourage the UK Government to consider the desirability and feasibility of a specific focus on enforcement arrangements in Wales within the overall UK agency enforcement structure; and**
- iii. Encourage the UK Government to develop a wider notion of an ‘unfair practice contact point’ as part of its consultation.**

A single reference point in relation to existing enforcement bodies would be advantageous. The current provision reflects rather than overcomes the fragmentation and piecemeal nature of UK rights enforcement and may require some prior understanding of how a particular issue is classified and the responsibilities of different bodies in order to get to the appropriate point of contact.

What our evidence suggests is needed also, however, is a single point of contact for those wishing to highlight (‘whistleblow’) unfair practice but who themselves are not seeking to make an individual claim or complaint, nor seeking advice about rights.

Onward reference for enforcement action might not be merited, or may be difficult to take in relation to a single complaint or allegation, but having a point of contact of this kind would allow disparate information to be collated and any patterns detected which, for example, could help identify particular areas where intervention may be called for.

An unfair practice/whistleblowing point of contact would allow reporting by trade unions and also by employers who may be aware of, or suspect, unfair practice by competitors or others but currently do not feel there is a way they can report it.

Potentially this kind of contact point would also be an avenue for use by those undertaking inspection or licensing activity outside the employment rights field (for example, food standards inspectors, local government licensing of certain business premises, environmental inspections, care quality inspectors) who may come across potential employment issues while acting within their own area of work.

In the longer term consideration might be given to the feasibility of such inspectors being trained and adequately resourced to encompass unfair work issues within their inspection remit.

3.3.2. Action within competence to help ensure effective enforcement

The rights enforcement approach in the UK is largely self-help. Individuals have to bring legal cases, rather than rights being enforced pro-actively by state agencies. The Employment Tribunals constitute the predominant mechanism for employment rights enforcement. The

effectiveness of this approach requires certain preconditions. It rests on workers' awareness and understanding of rights; knowledge of how to pursue and enforce them, the capacity to claim and willingness to do so. These preconditions are often lacking⁴¹.

In addition to pressing for greater state agency enforcement as indicated above, there are some things Welsh Government could do to assist in making the current rights enforcement approach more effective.

We recommend Welsh Government develop and implement a strategy to improve the effectiveness of existing rights enforcement in Wales. In keeping with recommendations 15-17, components of such a strategy should include [R14]:

- i. Improving knowledge of rights;**
- ii. Increasing workers' ability to pursue their rights;**
- iii. Measures to increase the detection of non-compliance and its consequences.**

(i) Improving knowledge and understanding of rights

Employment law is highly technical and complex. Employment rights and employer duties relevant to fair work are found in various employment law statutes, in company law, equality law, health and safety legislation and elsewhere.

Welsh Government could assist willing employers to be compliant by providing easily accessible, no-cost or low cost, straightforward information and advice. Doing this in respect of employment rights will help address the concern, particularly from smaller businesses, about the ease of complying and the cost of doing so.

We recommend Welsh Government bring together statutory provisions (whether in employment law, company law, equality law or other) which confer rights or impose obligations relevant to fair work. This should be accompanied by a short easy-read guide [R15a].

We recommend a targeted 'know your rights' campaign making full use of social media as well as other channels to increase awareness and knowledge of rights and how to seek redress [R15b].

Knowledge of employment rights is generally low. Those working in unionised environments are more likely to be informed of their rights and to feel able to raise issues with their employer. Awareness and knowledge of rights is, however, unevenly distributed and often lacking among those workers who need it most⁴².

We recommend awareness of rights among *prospective* workers is increased through, for example, Careers Wales, Skills Gateway, and through work-based learning providers in relation to apprentices [R15c].

(ii) Increasing workers' ability to pursue rights.

Those who know of their rights may work in contexts where they are fearful or reluctant to exercise them, fearing reprisal. Those experiencing adverse treatment may lack the necessary capacity or support to bring a legal claim. No legal aid is available and the financial and emotional demands of taking a case to an Employment Tribunal act as a further deterrent.

We recommend Welsh Government assist workers to enforce their rights by facilitating the availability of, and access to, advice and support, for example through funding support for advisory and support services [R16].

Welsh Government has done this in respect of front line advice on discrimination, under its equality duty. Action can be taken as part of the 'know your rights' campaign to signal a clear pathway to getting advice and support, including contacting a trade union.

(iii) Increasing the likelihood of breach being detected and of adverse consequences

In as much as the deterrence effect and adverse consequences for employers who abuse workers' rights rest on statutory penalties and the nature and operation of UK enforcement bodies, then this falls outside the competence of Welsh Government. However, there are some measures to increase the likelihood of breach being detected and penalised which can be part of the strategy.

We recommend Welsh Government (through the Office for Fair Work) seek out opportunities to support and enhance the enforcement role of UK enforcement agencies in Wales. This would include encouraging the involvement of trade unions, civil society bodies and employers [R17a].

We recommend that, if a UK-wide whistleblowing point of contact is not created, Welsh Government undertake a feasibility study on how it might be provided within Wales [R17b].

We identified above the need for an unfair practice/whistleblowing point of contact. By this route a range of non-state bodies (including trade unions, employers, civil society organisations, community groups and voluntary bodies) could play a part in identifying non-compliance to assist state enforcement. Such bodies could play an (informal) inspection and monitoring role in conjunction with state agencies. This could supplement the often limited inspection resources of state agencies. It would also provide particular expertise in certain areas and contacts with those workers which state agencies often find hard to reach.

We note that Wales has an Anti-Slavery Coordinator with a high level, multi-agency Leadership Group which has helped galvanise support for the anti-slavery agenda and facilitated cooperation and joint working. We suggest elsewhere (Part 7) that Fair Work Forums could provide a point of contact for multi-agency co-operation in particular regions, industries or sectors.

Employers can help ensure rights are respected, breaches detected and remedied by leveraging their market power. Lead employers can drive compliance through their supply chain, providing assistance in meeting standards if necessary, with the ultimate threat of losing the contract as a lever. Individual employers need to accept responsibility not only in relation to workers within their employment but also in regards to their contractors and suppliers. Employers have a responsibility – and a vested interest - to identify, call out and help tackle unfair practice.

The *Code of Practice: Ethical Employment in Supply Chains* which is part of the Economic Contract is a way of seeking to get private (as well as public) organisations to ensure organisations in their supply chain adhere to certain standards. This is discussed further in Part 4 of this Report.

We recommend Welsh Government co-ordinates information about organisations in Wales which have and have not complied with their statutory obligations, making this information easily accessible by the public [R17c].

Adverse consequences of non-compliance for employers may arise from damage to reputation or brand, including for lead organisations where non-compliance is identified within their supply chain. There can be potential loss of customers/consumers in public-facing organisations. Consumer power may be exercised in the form of boycotts of ‘unfair’ employers.

This requires information on non-compliance to be readily available, for example through a dedicated searchable website, and publicised. As well as being of value to consumers, businesses will find such a register of use for checking potential suppliers or contractors.

There are currently dispersed registers and sources of information about organisations which have breached employment standards which can be brought together. This is a relatively low cost exercise which could be conducted by the Office for Fair Work. For example the following could be brought together: HMRC ‘name and shame’ list of those not paying the statutory minimum wage; GLAA register of labour providers who have been refused a GLAA licence; available information on companies operating in Wales who are not fulfilling their statutory reporting obligations under MSA s54 or other corporate reporting requirements, for example publishing information relating to pay gaps, and the proposed ‘name and shame’ list of employers who fail to pay Employment Tribunal awards within a reasonable time⁴³.

More positively, there are lists of accredited living wage employers; signatories to the *Code of Practice: Ethical Employment in Supply Chains*; Transparency in Supply Chains report; information on organisations who are signatories to GLAA information-sharing protocols in textiles, construction and among retail supermarkets⁴⁴; employers awarded accreditations against standards from various sources (including the Welsh Government itself).

This information on compliant and pro-active employers could be brought together and made easily accessible – name and praise. In due course accreditation and public identification of

organisations meeting the Fair Work Wales standard will be an important part of this (see Part 7).

Part 4

Promoting Fair Work through Economic Incentives

4.1. A ‘something for something’ approach

There is widespread growing interest in a ‘something for something’ approach in respect of public funding. Sometimes known as social licensing or social contracting this requires recipients of public money to demonstrate and promote particular characteristics and to deliver on desired social objectives. It provides an important tool to use for encouraging business to embed and promote fair work. Fair work in turn contributes to the achievement of broader economic and social objectives and regional and local well-being goals.

Important measures are being implemented already in Wales designed to secure desired social objectives through economic incentives. These include the Economic Contract; Economic Futures Fund; a voluntary *Code of Practice: Ethical Employment in Supply Chains* and the use of public sector procurement.

Some of these initiatives are relatively new or recently remodelled. Others are being reviewed currently. Officials are undertaking a stocktake of the new Economic Contract operating model, Calls to Action and Economy Futures Fund. Further evaluative work is planned with a report expected for later in 2019. The *Code of Practice: Ethical Employment in Supply Chains* has been in operation only since March 2017 and a review of it is planned to start in Spring 2019. At the time of reporting, a second stage in a review of public sector procurement in Wales is underway⁴⁵.

The findings of current and scheduled reviews will provide further evidence of what currently is being achieved and where there are problems to be addressed. Our deadline for reporting in March 2019 precludes our being able to take account fully of these reviews in making our recommendations in this area. We have considered the information and data which are available to us but there are important gaps in what is available (and, possibly, what is being collected). We draw also on the responses to our Call for Evidence and observations from engagement meetings. These indicated areas of concern within what were seen widely as potentially valuable levers.

This Report, its definition of fair work and our recommendations should inform both the nature of current reviews and action arising from them.

Some detailed recommendations in relation to specific areas are made below. Overall we recommend [R18] that:

- i. **Public money should be provided only to organisations fulfilling, or working towards fulfilling our definition and characteristics of fair work (organisations meeting the Fair Work Wales standard);**
- ii. **Inward investors should be fair work organisations;**

- iii. **Infrastructure projects and large capital investment projects should be Fair Work Wales projects;**
- iv. **The focus and priorities of public sector contracting should shift towards social value, including fair work.**

Examples of large infrastructure projects used to further social objectives can be found in the construction of the 2012 Olympic park, Cross Rail and Heathrow Terminal 5⁴⁶.

4.2. Economic Contract /Economy Futures Fund

Prosperity for All: Economic Action Plan sets out the new Economic Contract and the Calls to Action which businesses need to address in order to access Welsh Government financial support, including through the new Economy Futures Fund⁴⁷. This fund consolidates various previous funding schemes.

Under the Economic Contract, businesses seeking Welsh Government investment need to demonstrate commitment to ‘four pillars of social justice’. These are growth potential; fair work; promotion of health, skills and learning in the workplace; and progress in lowering carbon footprint.

It is expressly stated that the pillar of fair work is to be ‘as defined by the Fair Work Board’ (a role now resting with this Fair Work Commission). It should be noted that our definition of fair work, set out in Part 2 overlaps also with another pillar, namely promotion of health, including mental health, skills and learning in the workplace.

We recommend that, in keeping with its stated intention, Welsh Government adopt the Fair Work Commission’s definition of fair work in relation to the Economic Contract/Calls for Action/Economy Futures Fund [R19].

All four pillars are equally weighted with a business having to demonstrate an equal commitment to each of the criteria to be eligible to progress to the next stage. The responsibility is on the business to demonstrate commitment to individual elements, proportionate to the size of company and nature of activity. A range of examples can be used. To date more than 150 Economic Contracts have been completed. Little detailed information has been made available on the process. We would like to see greater transparency and reporting on the process and outcomes.

It is important that ‘commitment’ is adequately tested. The development and adoption of tailored Fair Work Wales standards, as proposed in this Report (Part 7), will assist businesses seeking to demonstrate the required commitment.

Satisfying the Economic Contract is a necessary but not sufficient condition to access direct Welsh Government financial support. To do so a business must have an investment proposition that aligns with at least one of the five Calls to Action. These are:

- Decarbonisation,
- Innovation, entrepreneurship and headquarters,
- Exports and trade,
- High quality employment, skills development and fair work,
- R&D, automation and digitalisation.

Over 70 programmes have been approved across these Calls for Action.

The ‘something for something’ approach does not currently apply to commercial finance delivered through Business Wales or the Development Bank of Wales. The rationale for the exclusion is not apparent.

We recommend coverage should be extended to finance provided from the Development Bank of Wales and Business Wales (with the objective of assisting employers to meet fair work requirements rather than seeking to exclude them from funding) [R20].

4.3. Code of Practice: Ethical Employment in Supply Chains

The Code is another example of an innovative Welsh Government development. It has received favourable external comment, including from the Director Labour Market Enforcement in his 2018/19 strategy and OECD Observatory of Public Sector Innovation.

Section 54 of the MSA 2015 requires that any commercial organisation in any sector which supplies goods or services and carries on a business or part of a business in the UK must produce a slavery and human trafficking statement for each financial year. The statement must set out what steps they have taken during the year to ensure modern slavery is not occurring in their supply chains and in their own organisation. Currently this requirement applies to organisations with a total turnover threshold of £36 million. The Code is a commendable means of attempting to broaden the scope and extending the reach of this requirement in Wales, including to the public sector. Signatories to the Code are able to use the Welsh Government anti-slavery logo.

All organisations in receipt of funding from Welsh Government, either directly or via grants or contracts, are expected to sign up to the *Code of Practice: Ethical Employment in Supply Chains*. Other public and private sector organisations in Wales are encouraged to sign up.

Signatories commit to implement a set of actions to tackle certain unfair employment practices (zero hours contracts, umbrella companies), modern slavery and human rights abuse, blacklisting and the implementation of the Living Wage within their own organisations and through their supply chains. We could see no evident logic to the selective subject matter covered by the Code. Guidance notes accompanying the Code provide a more detailed ‘fair work question’ which, as it is suggested, may be used in the procurement process (‘invitation to tender’). The Code itself does not fully cover all aspects of fair work as defined by this Commission.

We recommend that the Fair Work Commission’s definition and characteristics of Fair Work be adopted and given prominence within the *Code of Practice: Ethical Employment in Supply Chains* [R21].

The Code is voluntary. Welsh Government *expects* all public sector organisations, businesses and third sector organisations in receipt of public funding to sign up to the Code. Other organisations operating in Wales are *encouraged* to adopt the Code. By March 2019, 51 public bodies, 103 private sector suppliers and 19 voluntary bodies had signed up. Twenty-one others who are not suppliers or in receipt of government funding had signed up⁴⁸.

The Code is potentially valuable in seeking to get private sector organisations in receipt of Welsh Government funding to use their market power to ensure that organisations in their supply chains adhere to certain standards (and provide assistance to them to do so). Concern about reputational risk, damage to brand and other ‘business case’ rationales may lead to some voluntary use of supply chain pressure to promote fair work, but these are highly contingent and variable. Research suggests that the impact of initiatives driven by business case rationales or Corporate Social Responsibility may not always run very deep, leading to window-dressing policy statements rather than substantive implementation⁴⁹. It is therefore important that the Code’s potential is realised fully.

It is not clear what the targets are for obtaining signatories to the Code. However, the numbers signing up to the Code can be seen as disappointing, particularly in respect of public bodies in Wales. As of early March 2019 only 43 of around 110 Welsh-funded public bodies are signatories⁵⁰. In part this may reflect under-resourcing of the Code but it does beg the question of what force there is behind the *expectation* that all public sector organisations will sign up. This expectation needs to be more robust. Failure to sign up should have some consequences.

Similarly, the *encouragement* to private sector organisations not in receipt of government funding does not appear to have secured many signatories. Some key employers in Wales are noticeable by their absence.

Furthermore, concern was expressed in evidence to the Commission that very few employers who have signed up are accredited Real Living Wage employers. Even allowing for the fact that the RLW may be paid by those not so accredited, this raises questions as to the adequacy of the Code’s requirement that signatory organisations ‘*consider*’ paying the RLW. This is a weak formulation. As a minimum we would like to see those signing up to be required to demonstrate what consideration has been given to this and how, and to produce an action plan. Adoption of our definition and characteristics of fair work (tailored as necessary) as set out in Part 2 of the Report will assist in this.

We considered whether signing up to the Code should be mandatory for public sector bodies and those receiving public funding. Mandatory approaches were seen by many of those responding to our Call for Evidence as the most effective way to accelerate the pace of change and to ensure consistency, creating a level playing field. Some responses, however,

noted achievements of voluntary initiatives such as Living Wage accreditation and raised the possibility of a mandatory Code deterring employer engagement. We note that research evidence tends to suggest that voluntary Codes have limited take up and modest effect⁵¹.

On balance we favour a mandatory approach. **With regard to the *Code of Practice: Ethical Employment in Supply Chains*, we further recommend [R22]:**

- i. Signing up to the Code should be made a requirement of Welsh public bodies and those organisations in receipt of public funding;**
- ii. More directed action should be taken to encourage a greater number of businesses not in receipt of public funding to sign up against set targets;**
- iii. Those signing up to the Code should be required to demonstrate how and what consideration has been given to paying the Welsh Living Wage, with an action plan to achieve this;**
- iv. Welsh Government should ensure sufficient resourcing to provide effective implementation and monitoring of the Code;**
- v. Signatories to the Code be required to be open to audit and monitoring (including provision of data) with an independent element. This is particularly important with long term supply contracts.**

The last two points reflect our view that the Code requires more robust oversight. There appears to be some good practice which could be spread. For example some local authorities use the Code in procurement documents, and some organisations have appointed senior level champions for the Code and developed communities of practice. But lack of action also was reported to us.

Effective monitoring of the Code is needed to ensure that substantive implementation is achieved and to maximise its impact on practice. One half-time post is currently allocated within Welsh Government to the promotion and oversight of the Code. Much has been achieved but this level of resource is inadequate to the task involved.

4.4. Procurement

Annual procurement expenditure amounts to £6.3bn, representing over a third of the total Welsh Government budget. Using public sector purchasing power can directly contribute to the fulfilment of social objectives and priorities. Furthermore, using procurement in this way is important in that it ‘gives a signal to the market and general public in favour of social responsibility and therefore influences and contributes to shaping choices and behaviours in suppliers and consumers’⁵².

Marketisation, reduction in professional capacity across Wales and cost cutting in the public sector over the years has affected procurement. A shift in focus and priorities is required so that the public sector is empowered to consistently utilise procurement as a way of achieving social objectives.

The Welsh Government is committed to support the wider public sector to use its annual £6.3 bn public procurement spend as an investment driving economic, social and environmental benefits and supporting good jobs and growth. It is already doing this, for example through the ‘Community Benefits’ approach and the ‘Better Jobs Closer to Home’ initiative⁵³.

Procurement can be a powerful tool for promoting fair work. Given the ongoing work to respond to the review into the use of public sector procurement we limit our comments to some observations based on our consideration of the evidence, including experience elsewhere⁵⁴. The Fair Work Commission assumes that, among other things, the response to the review will lead to an update of the *Wales Procurement Policy Statement*⁵⁵.

We note that the Scottish Government has issued Statutory Guidance to incorporate fair work considerations into procurement. The experience and lessons learned from Scotland’s approach to procurement should be explored further to help inform policy direction within Wales.

Clarity of purpose is required as to what is being sought through procurement. Goals need to be aligned. There is a danger of over-loading unless there is clarity, coherence and consistency. Objectives need to be well-defined, measurable and reasonable within specific market conditions. It is important to recognise the importance of procurement opportunities for smaller business. They may need to be assisted to meet procurement criteria and not deterred from seeking contracts.

The Welsh Government needs to (and be seen to) promote fair work through its own direct contracting as well as through local government and other public sector bodies. High level leadership, strong political commitment and accountability are important. As with other areas discussed in this Report, there is need to secure buy-in from local policy makers, procurers, suppliers and the wider public. Tensions and difficulties in the context of public sector budget cuts have to be recognised. The public sector in Wales has lost millions of pounds in funding over the last decade. There is a compelling case for fair work and broader social objectives to be pursued through procurement, for example in terms of the gains for public sector organisations, the quality of goods and service provision and benefits for communities. But an evidence-based case needs to be made. Further work is required and could be undertaken by the Office for Fair Work, utilising the Fair Work Wales Observatory (see Part 7 of the Report) as appropriate.

Fair work goals need to be part of the corporate objectives of the procuring organisation in order that they permeate purchasing systems. Purposeful fair work interpretation and application of procurement regulations are required. Dedicated officer capacity is needed, as is support for the procurement function. Attention needs to be paid to workload and capacity issues for procurement functions both within Welsh Government and at local government level. These are often under-resourced. There will be a requirement for training and possibly greater professionalization of the procurement function to deliver on the new focus. It is likely that new skill sets will be required. A fair work procurement qualification could be

developed. Public officials should be supported to understand their role in using public funds to deliver fair work.

Other relevant issues concern the size of the procurement function, its organisational location (procurement must be positioned in organisations so that it is not constrained by focus only on bottom line cost priorities), its decision-making power, level of control and discretion.

All stages of the procurement process need to be covered and monitored. For example, post award contract management is an area which is not always optimised. Effective monitoring of performance and reporting systems should be in place. Delivery of promised fair work outcomes by suppliers needs to be monitored, with sanctions applied if those outcomes are not delivered.

We recommend that fair work is a guiding principle of the wider review into the use of public funding which is being developed [R23].

It is important that every lever at the public sector's disposal is utilised to support the principles of fair work. Fair work is integral to the review of public funds and should sit within a future local wealth building programme which can help join up the impact of the public sector's financial power; economic development; fair employment; and socially productive use of land and property.

We note from experience elsewhere, such as Preston and Manchester councils, that progressive procurement is optimised only through effective coordination with other levers. Therefore, the Office for Fair Work which has a co-ordinating function, should lead on employment related procurement policy as part of the future local wealth building programme.

4.5. Other

There are other ways in which public funding might assist and encourage fair work. Public funding here could include the use of tax incentives or rates relief. The Welsh Government may look to invest to help employers meet the 'fair reward' characteristic of fair work. An example of such funding would be direct or indirect financial assistance to facilitate payment of the Welsh Living Wage. This has been done to some extent by Welsh Government in underwriting the cost of paying the Real Living Wage to direct employees in NHS Wales. Other measures are needed, for example direct ring-fenced subsidy of wages in social care.

We recommend Welsh Government, through monitoring experimentation elsewhere and/or through pilot schemes in Wales, ascertains what works in terms of other ways in which public funding can promote fair work (for example through rates or tax incentives) [R24]. Evaluation work could be commissioned from the proposed Fair Work Wales Observatory (see Report Part 7).

Part 5

Promoting Fair Work through Trade Unions and Collective Bargaining

We recommend Welsh Government take all measures possible within its sphere of competence to support and promote trade unions and collective bargaining [R25].

We look first at why public policy support for trade unions and collective bargaining is important for Fair Work Wales and then we consider what form that support can take. In doing this we bring together various measures recommended elsewhere in this Report.

5.1. The importance of trade unions and collective bargaining for fair work and the economy

Collective bargaining is a form of social regulation through which employers and trade unions negotiate about pay and other terms and conditions of employment and jointly determine workplace standards and rules.

Trade union presence and collective bargaining offers a form of industrial citizenship, providing workers with due process and representative voice at the place of work. It provides a democratic element whereby workers are able to express their interests and indirectly participate in shaping the standards which will affect them. For example, this can help ensure that flexibility initiatives are designed to take account of the needs of workers as they express them and not simply to meet the operational needs of employers.

Research consistently demonstrates that important fair work objectives are served by union and collective bargaining presence at the workplace⁵⁶. Unionised employees enjoy better wages and employment benefits such as occupational sick pay schemes and employer subsidised pension and they have better job security. Employees are significantly more likely to receive job-related training if they are a union member and if they are covered by a collective agreement. Unionised employees work fewer hours of unpaid overtime and enjoy longer holiday entitlements. Unionised workplaces are more likely to offer family-friendly arrangements.

Trade unionism and collective bargaining contribute to productivity and economic growth, while trade union weakness or absence contributes to inequality. Research demonstrates the persistent association of the decline in collective bargaining with the increase in income inequality, the fall in the share of wages in national income and deterioration in macroeconomic performance in the UK⁵⁷.

Decline in union density and collective bargaining has exacerbated the imbalance of power in the employment relationship. Weaker labour power has meant workers have been less able to secure a fair share of the wealth they generate. The Chief Economist of the Bank of England has pointed to this factor as one cause of wage stagnation and a drag on economic growth⁵⁸.

UK based research demonstrates that the presence of trade unions in an organisation is linked to less wage inequality⁵⁹. An international macro study by the International Monetary Fund concluded that less prevalent collective bargaining and trade unions are associated with higher labour market inequality.⁶⁰

Responses to a Department of Trade and Industry (DTI) consultation in 2007, endorsed by the then government, suggested that ‘workplace representatives bring an identifiable range of benefits worth £476 million up to £1333 million annually’⁶¹. Additional benefits were estimated to derive from the activities of Union Learning Representatives and the DTI calculated considerable productivity gains could be attributed to effective employee representation.

Determining employment terms and standards through collective bargaining – social regulation - offers a number of advantages over statutory legal regulation for workers and their employers. These include the ability to develop and adapt measures suitable to the particular conditions of firms and industries. Jointly determined standards have greater legitimacy. Having played a role in developing the rules, the parties are more likely to feel bound by them and to help ensure they are respected. As well as setting standards, collective bargaining provides a means of mediating conflict and resolving disputes at the workplace⁶².

The interaction of social regulation and statutory regulation is also important. Union presence helps ensure formal legal rights have meaning at the workplace. It helps create a context within which employment rights are not abused, employers understand their responsibilities, and facilitates the settling of issues where they arise so that resort to external enforcement is not necessary.⁶³ Where there is resort to external enforcement, unions offer members a source of advice and representation. Trade union and worker involvement has been crucial in the UK’s strong compliance with health and safety legislation.

Trade union presence is important in embedding, monitoring and enforcing legal standards in workplace practice and in assisting effective enforcement of employment rights. Trade unionism helps ensure the ‘level playing field’ desired by employers in respect of legal compliance. However the decline in unionised workplaces and an absence of lay union representation in the majority of UK workplaces currently limits the extent to which unions can perform these valuable functions.

5.2. Public policy support

Historically in the UK, voluntary, autonomous self-regulation through collective bargaining was more important than legal regulation through Acts of Parliament in setting workplace standards and governing their implementation. Where the law intervened it did so to support and extend collective bargaining or to fill gaps in its coverage, for example by setting up Wages Councils in sectors where collective bargaining was underdeveloped.

Encouraging trade union membership and supporting collective bargaining was a central part of the ‘good employer’ model of the public sector from 1945, highlighting effective employment relations practice and setting an example for the private sector by endorsing

principles of fairness, involvement and equity in its treatment of the workforce⁶⁴. UK public policy throughout the twentieth century up to 1979 reaffirmed the view that collective bargaining was the best method of conducting industrial relations⁶⁵.

Currently there is limited legislative support for union organising or collective bargaining. Rather, recent UK Governments have sought to undermine and restrict it with a consequential widening of the 'representation gap'. As discussed in the Appendix, although union membership and collective bargaining coverage remain fairly high in the public sector, both are much lower in the private sector. A large proportion of workers have no access to union representation at work. The statutory recognition procedure which began operation in 2000 has had some positive impact on recognition of trade unions for collective bargaining. However where recognition claims made under the legal provisions have succeeded this has consisted largely of infilling and close expansion in existing areas of union presence covering relatively few employees, rather than growth in new areas.

Driven largely by European requirements, there has been a growth in UK legislative provisions requiring employers to inform and consult employee representatives, irrespective of union recognition. These provisions apply to particular circumstances (for example statutory consultation over redundancy) and more broadly. The Information and Consultation of Employees (ICE) Regulations, introduced from 2005, represent an important development the potential of which has not been realised in practice. The ICE Regulations give employees in undertakings with 50 or more workers the right to be informed and consulted by their employers on a range of key business, employment and restructuring issues. Employers may take the initiative in setting up these consultative arrangements or employees may request they do so, with statutory fall back provisions where organisation-specific arrangements are not agreed. The UK Government recently announced its intention to reduce the proportion of employees required to trigger negotiations to establish ICE arrangements from 10% to 2%. It has not proposed, however, that recognised unions should have the right to initiate negotiations.

There was employer-led activity following the introduction of the ICE Regulations in terms of reviewing, modifying or introducing consultative arrangements but overall the take up has been low⁶⁶. In part, this reflects trade union indifference and some concern at the time that such workforce-wide consultation arrangements potentially could undermine union recognition and collective bargaining.

Consultation as a form of employer engagement with trade union or other workplace representatives long predates the ICE Regulations and has taken various forms in British industrial relations. Meaningful consultation performs a different function to negotiation; it offers unions a different type of engagement to collective bargaining and can operate at a higher, more strategic level with a broader reach. It often encompasses issues which provide a basis for cooperation between employer and workforce representatives.

There is limited scope for Welsh Government to legislate directly in the area of industrial relations under current devolution arrangements. But non-legislative action can be taken to support trade union growth and the spread of collective bargaining.

We recommend that Welsh Government state a public policy commitment to promoting trade unions and collective bargaining [R26].

The definition and characteristics of fair work we identify in Part 2 of this Report include a number of core elements favourable to the promotion of trade unions and of collective bargaining. These include requirements concerning union access, facilitating effective employee choice in relation to union membership and collective bargaining. The Fair Work Wales standard (proposed in Part 7) will also involve these elements. Adoption of the fair work definition and our recommendation that Welsh Government economic and business support goes only to fair work organisations will assist in extending the coverage.

Further support will come from adoption of our recommendation that Welsh Government and public bodies visibly lead by example in being fair work employers (R31); our recommendation that evidence relating to benefits of collective bargaining is marshalled and publicised (R30), and our proposals that the business support infrastructure in Wales is geared to promoting fair work, including trade unions and collective bargaining.

Welsh Government funding of Union Learning Representatives (ULRs) via the Wales Union Learning Fund delivers benefits in developing the employability and essential skills of the workforce⁶⁷. Recent evaluation shows ULRs are highly effective at engaging workers in learning, deliver significant financial benefits for workers and employers, and are valued by both⁶⁸.

We recommend that Welsh Government continues its investment in Wales Union Learning Fund [R27].

Union density, at 30%, is higher in Wales than the UK. This reflects features of the Welsh labour market, including the high proportion of public sector jobs (see Appendix). However union membership has been declining. Membership of unions is low among workers who are most in need of it: those in insecure, low paid private sector jobs, such as those in private sector services and those working in the so called ‘gig economy’. Membership is lower among young workers, who often work in such jobs. Surveys indicate that this is due more to lack of opportunity to join rather than a view that unions are not important or necessary.

Unions historically have not always sought to embrace certain types of workers (for example those working part-time, or contingent workers) nor have the interests of women and other marginalised groups always found a place within traditional, white male-biased bargaining priorities⁶⁹. Union transformation however has been underway for a number of years, not least since a greater engagement with questions of equality and diversity is seen as essential to union revitalisation and long term survival. Further, the legitimacy of unions as social partners rests on their ability to claim representativeness.

The dominant trend in Britain has been for union representation to become concentrated at the workplace. However workers are often detached from particular places of work. Fragmentation of the labour market and growth of the contingent workforce poses particular challenges. Trade unions have been developing innovative organising strategies which have met with some success, for example organising workers in the ‘gig-economy’. However, unions still face particular difficulties organising in areas where their representation is most needed.

The opportunity to bid for financial support could assist unions meet organising and representation challenges posed by the changing and diverse nature of the labour market and by changing technologies. Funding also could help build the capacity of union lay representatives to be agents for fair work and to make effective workplace contributions.

The Union Modernisation Fund which the UK Government established in 2004 to facilitate the operational modernisation of independent trade unions and their federations demonstrated the value of such an approach⁷⁰. The UK Fund was wound up in 2010 but a similar arrangement continues in Scotland under its Trade Union Fair Work and Modernisation Fund. £250,000 was allocated to this fund in March 2018 with £100,000 for equalities leadership work.

In Part 7 of this Report, where we consider how to enhance capacity to drive and embed fair work, we recommend the establishment of a Fair Work Wales Fund. Our proposal is that unions and other civil society organisations will be able to bid for funding for specific fair work initiatives.

Part 6

Promoting Fair Work through Other Measures

In this Part of the Report we recommend ways in which the Welsh Government can take action to create interest, enthusiasm and buy-in for the Fair Work Wales agenda. This includes spreading awareness and ownership and demonstrating how fair work matters. Such action is necessary in its own right. It is also important in helping engender a favourable context for the success of the legislative and economic levers discussed in the preceding Parts of this Report.

We argue that it is important that Welsh Government leads by example and that it uses its influence to inspire and encourage others. We indicate how willing employers can be assisted and supported to be fair work organisations.

6.1. Spreading awareness and ownership of fair work

The Commission contacted a wide range of individuals and organisations to draw attention to its Call for Evidence in October 2018. It soon became clear that, beyond the peak social partners, this was the first that many knew about the Welsh Government's desire to promote fair work and the appointment of the Commission. The submissions to the Commission were universally supportive of the Welsh Government's desire to encourage fair work in Wales but there has been little information dissemination.

Our reporting timescale precluded our developing an iterative approach which could build interest and secure engagement through ongoing dialogue and extensive consultation. We recognise the reasons for the imposed timescale, but it stands in stark contrast to the way in which fair work initiatives taken in other geographical areas have proceeded. The missing ground work now has to be undertaken.

We recommend that Welsh Government develop and resource a communications and marketing strategy to create widespread awareness of the fair work agenda and generate enthusiasm for it [R28].

Fair work needs to be owned on the ground. **We recommend that Welsh Government work with key stakeholders, allies and advocates of fair work to publicise and 'sell' the concept of Fair Work Wales, fostering active interest and engagement of the people of Wales in the fair work endeavour [R29].**

Engaging the interest of citizens stimulates valuable 'bottom up' input; provides a source of information and experience to tap into and an additional way of identifying and addressing needs as defined by those affected - particularly where they lack representative voice through trade unions.

An informed public (as citizens, customers, consumers, service users, workers) also can exert pressure for fair work and provide a way of holding to account from below. This will be aided by public identification of Fair Work Wales organisations (see Report Part 7) and by making visible through negative publicity those employers who fail to comply with minimum standards, as recommended in Part 3, above.

6.2. Showing how fair work matters

Linked to securing buy-in from employers and others is showing that fair work matters in social justice terms but also in delivering positive gains for individuals, organisations, communities and the economy.

There are convincing ‘business cases’ to be made for fair work. Many organisations currently adopt fair work practices voluntarily because of the benefits they offer to the organisation and their fit with preferred approaches to human resource management. But not all businesses will see it in their interests to take voluntary action.

Some business models rely on exploitation and unfair practice. Enforcement work in Wales around modern slavery has exposed some extreme forms of these. Some business models rely on profit-driven evasion of legal rights and social protection which may involve not paying tax or social security contributions, so harming the public purse as well as workers. Welsh Government needs to be open about there being no room for exploitative business models in Wales.

Responses to the Commission from the business community, however, indicated that embracing fair work was seen not only as the ‘right thing’ for them to do but also potentially commercially advantageous. Considerable research evidence supports this perspective, detailing gains from fair work.⁷¹

At its most basic, promoting and encouraging fair work aims to eliminate unlawful and unfair employment practice, ensuring adherence to minimum standards. Not only does this benefit workers, but employers gain from competing on a level playing field, not being undercut by those engaging in unfair, exploitative practices.

Beyond this, workers, families and communities benefit through obtaining stable income which enables a decent standard of living. They gain through having work which provides security as required but also flexibility taking account of individual needs, thus enabling wider participation in civic society and the ability to undertake other roles.

Individuals and communities gain where access to work and progression within it is not being disadvantaged by reason of gender, race, disability, sexuality or other protected characteristics. In ensuring this, employers benefit in terms of attracting, motivating and retaining staff and by tapping into and realising the potential of all. Companies with diversity across the workforce and at board level are more likely to exceed the average profit margin. Fair work employers also secure reputational gains, increasing their attractiveness to consumers and potential recruits.

Effective individual and collective voice facilitates the management of conflict, and enhances the ability of workers to contribute to the success of the enterprise. Enabling effective voice for workers, representation of their interests through independent recognised trade unions, and participation in decision making helps adjust the imbalance of power inherent within the individual employment relationship. Importantly, collective voice provides fairness in process as well as in outcomes. It helps avoid fair work being seen as a ‘one-off’ or a fixed attribute, providing a way of adapting to changing contexts and expectations.

Evidence demonstrates positive links between the fair treatment of employees, their well-being and engagement, with increased productivity and other organisational performance measures. Employers gain through increased organisational commitment and discretionary work effort. Fair work helps protect public service standards and assists all sectors improve service delivery.

This is not to overlook that delivering fair work may involve challenges and require supportive measures. For example, some employers may face additional costs in the short term and immediate costs may be more readily quantifiable than future benefits, which may be incremental. Further, some benefits may not be monetarised easily.

We recommend that evidence of macro and micro level benefits of fair work, and of the negative organisational and societal impacts of unfair work, is marshalled and publicised. Where evidence is absent for Wales it should be commissioned. This might include research at different levels of aggregation to demonstrate what works, and the gains which might be secured in particular contexts [R30].

Quantitative evidence is required but also qualitative case studies from within Wales. We came across a number of very good examples in different kinds of organisations. Such qualitative evidence assists the demonstration effect. This work could be undertaken by the proposed Fair Work Wales Observatory (see Report Part 7).

6.3. Leading, influencing and inspiring

We recommend that Welsh Government and public sector bodies ensure they are actively and visibly Fair Work Wales organisations [R31].

Leading by example, ‘walking the talk’, is important in terms of legitimacy and in demonstrating by doing. It is also important that Welsh Government and public bodies embrace fair work given the size and composition of the public sector workforce in Wales (see Appendix). Competence building may be required within Welsh Government and public bodies to understand what is meant by fair work and how to implement it.

In seeking to lead by example Ministers should consider whether their own work patterns and workloads would be seen as best practice.

We recommend that Welsh Ministers should take every opportunity to use their influence to further promote and advertise fair work [R32]. An example of this might be

formal acknowledgment and celebration of fair work progress and achievement by various categories of organisation by the First Minister at different annual award events, with attendant publicity. This links to our proposal for a Fair Work Wales standard (see Part 7) and for a ‘name and praise’ register (see Part 3). Fair Work Wales Forums, where these exist, could enable identification of firms or organisations which are doing more than is typical for their sector or size (see Part 7).

We recommend Welsh Government use its convening power to bring together fair work allies to create what the CIPD termed in its submission to us as a lasting movement towards fair work. This includes trade unions and other civil society organisations, responsible businesses and independent experts [R32a].

In its evidence to us the Carnegie Trust noted that key learning from initiatives such as ‘Be the Business’ and ‘Engage for Success’ is that businesses are most likely to be influenced by the example of their peers. We are aware of employers in Wales who exemplify characteristics of fair work. Their example can help to tap into latent interest among employers, particularly competitors, to address fair work issues, as well as increase the visibility of this agenda among employers who are not already thinking this way.

We recommend Welsh Government enlist the support and influence of willing employers to increase the visibility and desirability of fair work within the different business communities. This might include identifying Fair Work Wales Champions or Ambassadors [R32b].

6.4. Assisting and supporting willing employers

Many employers will wish to be Fair Work Wales employers. **We recommend that Welsh Government, in consultation with its social partners, take the steps we indicate to assist and support willing employers to embody the characteristics of fair work in their organisations [R33].**

This will include working through, or in strategic partnership with, bodies such as Acas, EHRC and voluntary organisations

Other measures include supporting employers to ‘do it right’ through provision of easily accessible, no-cost or low cost, consistent, straightforward information and advice.

There is no shortage of good quality advice on employment practices related to the indicators of fair work set out in Part 2 of the Report. For time-poor employers, however, there may be ‘too much’. The indicators can be linked to existing best practice advice for employers and the provision of tailored support, for example from Acas, EHRC and other public agencies.

We recommend Welsh Government invite Acas, EHRC and other relevant bodies to work together to map their advice onto the characteristics and indicators of fair work elaborated in Part 2 of this Report. The aim would be consolidation and simplification

of appropriate advice and signposting clear pathways to assistance, including online resources [R34].

This is in addition to our recommendation (R15a) regarding bringing together guidance on legal obligations. Tailoring consolidated advice to the needs and capacity of organisations less likely to have a professional HR department is particularly pertinent. That advice should also be disseminated to those who often advise small business, such as accountants.

Our proposal for a Fair Work Wales Standard (see Part 7) identifies how this can be an avenue for identifying and addressing an organisation's need for advice.

A further supportive measure would be assisting transparency and the provision of information required of fair work employers and helping minimise the reporting burden.

Assistance here could take the form of an 'ask once' approach where the same information is required by Welsh Government or its agencies for different purposes. Standardised reporting requirements and the provision of pro-formas for employer use would also assist. The EHRC can advise on classification, collection and reporting systems relating to equality and diversity.

The adoption of consistent data collection on specified measures across employers will facilitate monitoring, benchmarking and tracking of progress on fair work (see Part 8).

Willing employers can also be assisted through ensuring the business support infrastructure in Wales is geared to promoting fair work, including the benefits of trade unions and collective bargaining. Also, employer bodies and others can be encouraged to foster improved management practice and managerial capacity building around fair work.

Part 7

Taking Fair Work Forward: Building Capacity, Institutions and Mechanisms

It is obvious that the work of this very short-term Commission can be only a staging post in delivering the intention of the Welsh Government to use all levers available to it to promote and encourage fair work. The Fair Work Commission itself is ‘job and finish’. But fulfilling the Terms of Reference does not mean that the job is finished.

We picked up the fair work baton from the social partnership Fair Work Board and the social partners will be crucial in carrying forward the work of the Commission. Other measures are also required. As well as visible commitment and leadership from Welsh Ministers, there needs to be capacity for carrying the work forward. To ensure meaningful progress and delivery on the fair work agenda existing institutions and mechanisms should be enhanced and additional mechanisms created.

In this Part of the Report we recommend the creation of an Office for Fair Work; a strengthening of social partnership (see also Part 3 of the Report); Fair Work Wales Forums; the development of Fair Work Wales standard(s); a Fair Work Wales Observatory and a Fair Work Wales Fund.

There are budget and resource implications of these recommendations. Without them, however, there is a risk that fair work as a necessary component of achieving a more equal, just and fair society will be simply an expressed aspiration; an initiative without follow through or impact.

7.1. Office for Fair Work – a linchpin

We recommend the creation of an adequately funded and appropriately staffed Office for Fair Work. This dedicated resource within Welsh Government is a necessary linchpin for fair work [R35].

The Office for Fair Work will perform a number of key functions in driving fair work forward, helping foster a culture of fair work within and beyond Welsh Government. Its existence will give fair work greater visibility and prominence; a visible embodiment of Welsh Government commitment to the agenda. It will ensure attention to implementation and all-important integration across policy fields.

We proposed (Report Part 1) that the Office for Fair Work be positioned within Welsh Government but not located within a particular department. There is no employment department within Welsh Government. The absence of a UK Government department concerned with employment (a Ministry of Labour or Department of Employment) has been likened to ‘the Play of Hamlet without the Prince of Denmark’. The question raised is whether ‘the vocation and mission of government to secure decent conditions of work and

life for our national labour force and its dependents is well served and carried out' given such an omission⁷². The same question can be raised in the context of Wales. Establishing an Office for Fair Work will go some way to overcoming the limitations to which this absence gives rise.

There is significant activity of potential relevance to fair work taking place across Welsh Government but connections are not apparent and the relevance may not always be recognised. Lack of coherent join-up across current programmes and initiatives was apparent to us and mentioned in various evidence submissions. The Office for Fair Work will operate to ensure this activity is successfully aligned. Policy officials need to see their work as being part of a fair work programme, a suite of initiatives specifically to deliver Fair Work Wales.

Alignment and integration through the work of the Office for Fair Work will avoid inefficient duplication of effort or inadvertent undermining. It minimises the risk of overlooking opportunities to further the fair work agenda and maximises the potential benefits of government action. Furthermore, a coherent, co-ordinated approach reduces the likelihood of multiple, seemingly unconnected demands being made of those at whom government action is directed.

As an indicator of what might be required, we note that the Scottish Government's Fair and Inclusive Workplaces Office has 16 members. Its focus is to deliver that Government's Fair Work Framework so that 'by 2025, people in Scotland will have a world-leading working life where fair work drives success, well-being and prosperity for individuals, businesses, organisations and society'. We note that its remit mirrors broadly that which we have outlined for the Welsh Government Office for Fair Work.

Functions of the Office for Fair Work would include:

- Developing a strategy and implementation plan for the recommendations of this Commission; monitoring and reporting progress on them.
- Fostering a coherent, cross-cutting, collaborative approach within Welsh Government so all policy development, implementation and delivery has a fair work perspective.
- Ensuring fair work policy initiatives are followed through to impact on practice (monitoring, feedback, holding to account).
- Engaging with the Communications Unit over fair work and 'know your rights' awareness campaigns.
- Facilitation and support of Fair Work Forums including undertaking or commissioning detailed sectoral analysis to provide robust evidence for deliberations.
- Implementation and oversight of the Fair Work Wales standard (working with Fair Work Forums and other stakeholders).
- Oversight of the *Code of Practice: Ethical Employment in Supply Chains*.
- Responsibility for management of the Fair Work Wales Fund.
- Pro-active engagement and liaison with the UK Government in respect of policy in relevant non-devolved areas (e.g. UK employment rights and industrial relations).

- Strategic relationship building, including with such organisations as Acas.
- Developing networks; including networking with those in UK regions and cities working on fair work/good work initiatives and forming a network of Fair Work Wales allies.
- Obtaining, collating and publishing fair work data (working with the Welsh Government’s Knowledge and Analytical Services and the Fair Work Wales Observatory). Preparing an Annual Report (see Part 8).
- Commissioning research and obtaining specialist advice as required (working with the Fair Work Observatory).
- Compilation and oversight of public-facing registers of non-compliant and praiseworthy employers (see Report Part 3)
- Oversight of a Fair Work Wales website.
- Providing an internal and external point of contact.

Some organisations submitting evidence, or otherwise contacting the Commission, had not realised the time-limited nature of this body and indicated a willingness and desire for continuing interaction with the Commission to assist in the process of making Wales a fair work nation. Such support can be harnessed by the Office for Fair Work.

The Office for Fair Work will work closely with Welsh Government social partnership bodies.

7.2. Social partnership - integral to the fair work agenda

We see tripartite social partnership and wider multi-stakeholder dialogue as very important in driving forward the fair work agenda.

In Part 3 of this Report (R10a) we recommended Welsh Government seek to put social partnership on a statutory basis. We suggested that in doing this, the existing arrangements for social partnership and social dialogue should be reviewed and where necessary enhanced or extended.

The existing institutions of social partnership in Welsh Government are the Workforce Partnership Council (WPC) operating in relation to the public sector; the Economic Development Council (EDC) and the Social Partnership Strategy Group (SPSG). A Wales Social Partnership Unit (WSPU) is contracted to facilitate engagement between the Welsh Government and the social partners. In practice its role appears limited.

There have been some recent reforms which are viewed positively. The nine-member tripartite SPSG, drawn from the EDC, was established to put in place more effective arrangements for regular and ongoing strategic dialogue between the social partners, Welsh Ministers and Welsh Government officials. The WPC has been restructured. It brings together representatives from trade unions, public sector employers and the Welsh Government. A small Joint Executive has been established with three high level

representatives from within each partner institution. It is supported by a joint secretariat comprising representation from unions, public sector and government.

Evidence we received indicated that further reform and institutional development may be required, in part to ensure consistency and strategic co-ordination. It is appropriate that the tri-partite social partners themselves initiate any necessary reforms to this structure.

Greater clarity about the authority of social partnership bodies and clearer accountability placed on those tasked with implementation would help ensure that agreements reached through social partnership are implemented.

Measures may be required to ensure there is structured input from representatives of workers on Welsh Government bodies set up at different levels whose functions relate to work and the economy but where such input currently appears to be lacking. Examples might include Regional Skills Councils and Public Services Boards. The role of such representation would be to provide a perspective to inform collaborative deliberations.

Work may be required to ensure also that the full range of employing organisations is represented and other appropriate stakeholders, such as Citizens Cymru-Wales, Oxfam-Cymru, Business in the Community and others, are identified and involved.

7.3. Fair Work Wales Forums – ensuring sensitivity to context and sustainability

We recommend that the Welsh Government, working within social partnership, explores the feasibility of Fair Work Wales Forums with a view to initiating, fostering and supporting these [R36].

As outlined in Part 2 of the Report, a key role for a Fair Work Wales Forum is to identify what is an appropriate and proportionate expectation in relation to the detailed indicators of the fair work characteristics within its particular context. A Forum could be regional or industry/sector based, or, for example, concerned with small firms/micro businesses.

Fair Work Wales Forums would comprise the social partners, employers and unions, with an expert independent element and should involve other stakeholders as appropriate. Relevant bodies might include, for example, expert agencies such as Acas and EHRC, civil society organisations, and organisations representing customers/clients.

There are some aspects of employment in Wales, such as the absence of employer bodies at an appropriate level and the fact that some employers in Wales are branches of larger UK-wide companies, which may pose challenges to establishing sector Fair Work Wales Forums. Feasibility studies can explore the possibilities.

There are existing bodies of various kinds within different sectors in Wales which currently bring together employers and, in some cases, employers and unions for various purposes.

There are also regional bodies. Potentially existing bodies could be built upon, with social partnership built in where this dimension is currently lacking.

Through social dialogue informed by expert advice, and supported by the Office for Fair Work, a Fair Work Wales Forum would (among other things):

- Identify and agree what is an appropriate and proportionate expectation within their particular context in relation to our recommended universal characteristics of fair work;
- Develop tailored Fair Work Wales standard(s) and play a role in assessing the extent to which the requirements of a Fair Work Wales standard are fulfilled;
- Identify particular fair work problems within their particular sector or industry etc. and help tailor specific interventions to promote fair work;
- Promote awareness and ownership of the fair work agenda in its sector;
- Facilitate collaboration and shared learning within the sector; encourage communities of practice;
- Promote and coordinate sector/industry-wide voluntary initiatives (e.g. around skills and training);
- Help ensure ‘future proofing’ and sustainability of definition by understanding developments in the nature of work and changing workplace in that sector and their implications for the detailed fair work indicators;
- Provide a sector focus for inter-agency co-operation

We recommend a start be made by setting up a Fair Work Wales Forum in Social Care [R37].

The care sector is identified as ‘foundational’ in the Welsh Government’s Economic Action Plan, together with tourism, retail and food and drink. We consider that it should be prioritised for action to promote fair work. It is a core industry that contributes to individual and social well-being. Despite this contribution, it is a sector which displays various features associated with insecurity and poor working environment. A large percentage of the social care workforce is poorly paid and there is seeming undervaluation of the demanding, complex and valuable work that (predominantly female) employees within the sector perform.⁷³

A Fair Work Wales Forum for social care will bring together the multiple stakeholders within the industry to consider how best to promote fair work, including raising pay and improving other conditions of employment. There are already various developments in this sector (see for example Part 3.1). A Forum can bring together consideration of these, helping coherence and interconnection. It is important, in the Commission’s view, that Welsh Government is itself a participant in such a Forum and that the latter should address the questions of the funding and organisation of the sector, seeking to promote improvement in employment conditions through a programme of broader reform.

7.4. Fair Work Wales standard(s) – facilitating self-assessment and support

The elaboration of indicators for each of the characteristics of fair work outlined in Part 2 of this Report provides criteria by which organisations can be assessed, and in due course could form the basis of a self-assessment tool. Thus, the six fair work characteristics can be used to provide a Fair Work Wales standard. The Commission considers that it would help drive the fair work agenda to develop a public-facing standard to which organisations could commit. This is an approach generally welcomed by business.

We recommend a public-facing Fair Work Wales standard be developed based on the indicators of fair work characteristics set out in this Report. This should be promoted actively by Welsh Government and reinforced through a form of accreditation. Tailored Fair Work Wales standards, reflecting context, should be developed through a process of multi-stakeholder social dialogue [R38].

We emphasise that, although there should be no exceptions, what is required to demonstrate conformity to the fair work characteristics needs to be nuanced to take account of particular contexts, for example industry, sector, firm etc. Thus, suitable versions of the standard can be developed tailored to the requirements of different sectors or industries. Similarly it may be appropriate to develop a version of the standard for small or micro employers and to consider a standard for the self-employed. Social dialogue and the work of Fair Work Wales Forums provide a mechanism for the necessary development work, in conjunction with the Office for Fair Work.

In keeping with our view that becoming and being a Fair Work Employer needs to be conceptualised as a journey, the standard should comprise different levels. This is a common approach where charters or standards are used. Not only will this encourage and recognise incremental progress, it will help identify where assistance can be provided to assist organisations to progress (see Part 6.4).

Fair Work Wales accreditation needs to have an independent element and be based on submission of evidence relating to each of the fair work characteristics. There will be resourcing implications of this.

All types of employing organisation in Wales should be encouraged to sign up but we are not recommending a purely voluntary ‘self-stick’ badge. Voluntary codes of practice, charters or standards can be successful in attracting employers – around 5000 employers have signed up to pay the voluntary Real Living Wage for example – and they can be successful in securing employer buy-in in a way that compulsory measures may not. In some cases voluntary norms have played an important part in changing perspectives and breaking new ground; Stonewall’s work in fostering the inclusive management of LGBT people at work is a case in point.

However some codes or standards impose weak requirements on employers and rely upon self-reporting of compliance. As a consequence they may have very limited impact on the internal operations of organisations that take part. Codes or charter standards also risk being static. Another problem is that signatories may consist largely of businesses that already conform to the standards or which find it profitable or relatively easy to do so. Those which most need to take action because they fall well below the standard, in contrast, often remain aloof.

The approach we are recommending, and the fact that the Fair Work Wales standard is only one of a number of measures to promote fair work which we are proposing, should provide a way of avoiding the disadvantages.

Recognition and use of the standard should be incorporated into Welsh Government's procurement policy and into its programme support for business through the Economic Contract and other measures (see Part 4). This introduces a strong push towards seeking accreditation. Prior accreditation also will assist those responsible for decision making in respect of these economic levers.

A distinctive Fair Work Wales standard is proposed but the Commission recognises that this is a crowded field. There are already a number of standards and accreditations in existence which are of relevance to a Fair Work Wales standard. Assessment of organisations against the Fair Work Wales Standard needs to be developed in such a way as to take an organisation's membership of existing standards into account. Some of these have been developed within Welsh Government (e.g. Sustainability Charter; MERIT, anti-slavery logo, Healthy Working Wales), others are administered by bodies such as EHRC and Business in the Community. Yet others are run by commercial organisations (e.g. Investors in People, Great Places to Work and the Times Top 100 Companies). Where possible the accreditation bodies should be encouraged to work together to explore this issue and also be encouraged to work with the Office for Fair Work to develop metrics and systems of accreditation which take account of our definition of fair work.

7.5. Fair Work Wales Observatory – enhancing capacity; providing independent expertise

What is proposed here is a virtual observatory, not a fixed establishment incurring overheads or with retained staff.

We recommend a (virtual) Fair Work Wales Observatory is set up to make available additional capacity and expertise in carrying fair work forward [R39].

The Fair Work Wales Observatory would consist of a core of experts appointed as standing members. They would be willing and able to be called upon as required to provide independent expertise to enhance the capacity of the Welsh Government to deliver on its fair work objectives. Standing members could also advise on and help secure other sources of specific expertise if necessary. No fee would attach to appointment as a member of the

Observatory but a fee would be paid for work done (i.e. work would be performed under a framework contract). Appointment would be for a set period, renewable. We suggest two years in the first instance.

Having an Observatory rather than ad hoc engagement with independent experts offers various advantages. These include speed of commissioning and response; prior familiarity with the Fair Work Wales agenda; maintaining fruitful relationships; provision of ongoing independent advice where required.

Welsh Government already has various links with individual academics and university research centres. These could provide a basis for an Observatory. Expressions of interest might be invited also from those experts who submitted evidence to this Commission. The core of standing members could be appointed through open competition.

We have indicated at various places in the Report the value which could be added by a Fair Work Wales Observatory, enhancing internal capacity. Standing members of the Observatory might perform the following functions:

- Provide detailed sectoral and other analyses to assist Fair Work Wales Forums identify appropriate fair work expectations in particular contexts; to understand behavioural and structural drivers behind non-compliance and in shaping solutions.
- Input specific expertise in the design and development of the required data infrastructure, instruments and analytics for tracking fair work and in data analysis (working with Knowledge and Analytical Services and the Office for Fair Work).
- Assist in the design of the proposed Fair Work Wales Survey (see Part 8).
- Assist Welsh Government (through the Office for Fair Work) in developing representations to the UK Government on non-devolved matters, for example in relation to the legal framework.
- Provide a research and advice resource for the Office for Fair Work. Undertake such research as necessary, at different levels of aggregation and in different contexts, to provide an evidence base e.g. marshalling qualitative and quantitative evidence of benefits of fair work, including impact of collective bargaining, to demonstrate that ‘fair work matters’ (see Part 6.2).
- Undertake horizon-scanning to ensure the continuing relevance of the detailed indicators of fair work in changing contexts. Here work might overlap with requirements flowing from the inquiry into Digital Innovation for the Economy and Future of Work in Wales.

7.6. Fair Work Wales Fund - enhancing capacity through financial support

We recommend Welsh Government establish a Fair Work Wales Fund, open to bids from civil society organisations and trade unions [R40].

Civil society bodies could bid for funding to take forward specific, time-limited initiatives which would demonstrably contribute to fair work. This provides one way of encouraging the promotion of fair work by citizens and their community and other institutions. Bids might focus on work with and by particular groups, such as young workers or disabled workers.

The Scottish Government has provided funding to the Poverty Alliance to promote the Real Living Wage, allowing the appointment of campaign workers. This funding has been linked to a number of performance targets. This financial support is one explanation for the much higher incidence of employers paying the RLW in Scotland than in Wales (see Appendix).

Trade Unions could bid for financial support from the Fair Work Wales Fund to assist them in meeting the organising and representation challenges posed by the changing and diverse nature of the labour market and by changing technologies. Funding bids could help build the capacity of union representatives to make effective workplace contributions, including, for example, in promoting equality through the work of trade union equality representatives.

Applications would be made addressing set criteria with clear fair work objectives. Management of the Fund would be overseen by the Office for Fair Work.

Part 8

Measuring and Reporting Progress on Fair Work

8.1. Reporting on implementation of the Commission's recommendations

Once the recommendations in this Report have been accepted and timescales attached (as we outline at the start of the Report) regular reports should be made on their implementation.

We recommend a report setting out progress on implementation of the Fair Work Commission's recommendations should be presented no later than 6 months from the publication of this Report and at regular intervals thereafter [R41].

8.2. Reporting progress on fair work

As outlined in Part 1 of this Report, promoting fair work requires action beyond the scope of any single ministerial portfolio. We have recommended that fair work should be seen as a responsibility of all Welsh Ministers and officials.

We recommend that Ministers be required to report internally on a regular basis on how fair work is being advanced within their area. This reporting should inform an annual Fair Work Wales Report published by Welsh Government [R42].

Regular reporting against an agreed set of measures enables assessment of what progress is being made on fair work; it stimulates informed debate; indicates what is working, where, and allows evidence-based further interventions to be made where required. Robust, relevant data are necessary for this. A data infrastructure plan is required, which will require investment.

Various data sources exist; others are required. The Technical Annex to the Report, prepared by the Commission's independent expert advisor, discusses these issues in detail. Below, the Commission sets out recommendations informed by that Annex. The Annex also provides a basis for the discussions and engagement which will be required to progress some of these recommendations.

We recommend that the Technical Annex to this Report, prepared by the Commission's Independent Expert Advisor, forms a starting point for discussions on a data infrastructure plan and data collection. Such discussions should involve the Office for Fair Work, the Chief Statistician and other key Welsh Government data stakeholders such as those in the National Survey for Wales data collection team and those responsible for tracking progress against the well-being indicators/milestones. Such discussion can embrace detailed considerations of recommendations 44-47 [R43].

8.3. Data availability and collection

8.3.1. General surveys

Current data collection and reporting provide some useful general measures of fair work and can continue to be tracked. The picture of the labour market in Wales set out in the Appendix discusses the relative position of Wales, for example in terms of pay, inequality and insecurity/non-standard work. To do this it draws upon a number of existing UK macro-level surveys and smaller scale data collection by bodies such as the EHRC, as well as Welsh Government reports.

Some of these surveys have been boosted by the Welsh Government and provide results which place Wales in a comparative context. **We recommend Welsh Government continue to boost the Welsh sample size of surveys which produce data of relevance to tracking fair work whenever the opportunity arises [R44a].**

The Technical Annex to this Report, however, identifies limitations with the existing UK surveys for measuring progress on fair work in Wales. These limitations are general, in terms of their coverage of issues relevant to measuring and tracking fair work, and particular to Wales in terms of sample size and problems of disaggregation.

A valuable development has been the work of a UK level review group, the Measuring Job Quality Working Group⁷⁴. This was set-up by RSA and Carnegie Trust to scope out what was needed to give effect to a recommendation of the Taylor Review that the UK Government should ‘identify a set of metrics against which it will measure success, reporting annually on the quality of work on offer in the UK’⁷⁵.

Our definition of fair work is not the same as the ‘job quality’ measures identified by the RSA/Carnegie group but there are some commonalities, and the discussion in its report is instructive. A total of eighteen indicators of job quality were agreed by the group which recommended adding twelve new survey questions to the Labour Force Survey (LFS), a household survey carried out across the UK every quarter.

The commitment of the UK Government to creating national job quality metrics is a significant development. The UK Government has requested that the Industrial Strategy Council advise on how it adopts and tracks a set of metrics to measure the quality of work in the UK labour market. Importantly, the Measuring Job Quality Working Group recommended that the UK Government engage with the devolved administrations to consult on the implementation of the national measurement framework and how it interacts with devolved strategies and action.

We recommend that the opportunity for engagement and consultation on future UK data collection exercises in this area should be pursued, so that the Welsh definition and characteristics of fair work feature more strongly and disaggregation of the resulting data is possible [R44b].

Relatedly we recommend Welsh Government encourage the Office for National Statistics (ONS) to recognise the fair work data requirements of the devolved administrations [R44c].

8.3.2. Fair Work Wales Survey

Surveys which collect individual level data are useful and, although the LFS delivers relatively small sample sizes for Wales, the developments outlined above represent an important advance. However, measuring and tracking progress on Fair Work Wales requires a focus also on employers' policies, practices, their outcomes and workplace arrangements.

Welsh Government will need to ascertain on a regular basis the extent to which the characteristics of fair work defined in Part 2 of this Report are being fulfilled, the direction and the speed of travel. This is crucial to inform public policy and in mapping and understanding the changing workplace⁷⁶. A periodic survey of employers – a Fair Work Wales Survey - is a minimum requirement for this.

We recommend a dedicated Welsh survey of employers be designed to track the characteristics of fair work as defined in this Report. This Fair Work Wales Survey should be administered on a regular periodic basis. In the first instance a survey to provide a baseline is required [R45].

Work on the design and administration of this would involve Welsh Government Knowledge and Analytical Services (KAS) working with the Office for Fair Work, drawing on outside expertise through the Fair Work Wales Observatory if required. A proposal made in the Technical Annex is that this should be a short telephone survey in order to minimise costs.

8.3.3. National indicators

We noted in Part 3 of this Report that integrating fair work within the seven well-being goals of the Well-being of Future Generations (Wales) Act will have implications for national indicators which inform the annual 'Well-being of Wales' reporting.

At the time of writing, the Welsh Government is consulting on revising the national indicators and its intention to set a small number of national milestones to assess progress against the well-being goals. This activity provides the opportunity for amendments to be made to take account of the Fair Work Commission's definition and characteristics of fair work. The Welsh Government has indicated that it will do so⁷⁷.

We recommend the following in respect of the national indicators and national milestones [R46]:

- i. The two-thirds of the median UK wage indicator is replaced with one focused on the proportion of workers in Wales paid at or above the Welsh Living Wage;**
- ii. The job satisfaction indicator is removed;**

- iii. **Trade union recognition for collective bargaining is included as a national indicator;**
- iv. **The Welsh Living Wage and collective bargaining indicators are adopted as national milestones. We support the proposal to make gender pay gap monitoring a national milestone and welcome the feasibility work on extending the milestone to disability and ethnicity pay differences.**

8.3.4. National Survey for Wales

The Commission notes that KAS successfully has argued for a ‘fair work module’ to be included in the National Survey for Wales (NSW) 2019-2020. This is welcome since the NSW is the Welsh Government’s chosen vehicle to ‘measure progress against government targets and indicators’⁷⁸.

The module was developed before this Commission’s definition of fair work was available. In future the fair work questions in the NSW should reflect it.

We recommend that fair work data are collected regularly in the National Survey for Wales, reflecting the Commission’s definition of fair work. In conjunction with R45 this will provide new and periodic survey data covering both worker and employer perspective [R47].

8.3.5. Fair Work Wales administrative data

In addition to survey data, there is information of various kinds which will help track progress on fair work. Some is available currently, some will become available as the recommendations in this Report are implemented.

Examples of such information include the number of signatories to the *Code of Practice: Ethical Employment in Supply Chains*; the number of employers in Wales accredited as Living Wage employers by the Living Wage Foundation; trade union membership levels and the number of new trade union recognition agreements as reported by individual unions; the number of works councils established in Wales under the Information and Consultation of Employees Regulations; the number of organisations accredited as Fair Work Wales organisations. The transparency and data provision required of Fair Work Wales employers under our definition and the various statutory reporting requirements will provide further employer level data which can be monitored.

We recommend that key administrative data of this sort are collected systematically by the Office for Fair Work to help monitor progress and to inform annual reporting on Fair Work Wales [R48]

The Report Endnotes

Part 1

¹ Briken, K. and Taylor, P. (2018) ‘Fulfilling the ‘British way’: beyond constrained choice—Amazon workers' lived experiences of workfare’. *Industrial Relations Journal*, 49: 438–458

² Puttick, K. (2018) ‘From Mini to Maxi Jobs? Low Pay, ‘Progression’, and the Duty to Work (Harder)’ *Industrial Law Journal* 47(4)

³ Well-being of Future Generations (Wales) Act 2015 (anaw 2) Stationary Office Limited: Cardiff; Welsh Government (2016) *Taking Wales Forward* Cardiff: Welsh Government; Welsh Government (2017) *Code of Practice: Ethical Procurement in Supply Chains* Cardiff: Welsh Government; Welsh Government (2017) *Prosperity for All: Economic Action Plan*, Cardiff: Welsh Government.

⁴ See for example: GMCA (2019) Greater Manchester Combined Authority. [Online]. [12 March 2019]. Available from: <https://www.greatermanchester-ca.gov.uk/what-we-do/economy/greater-manchester-good-employment-charter/>; Liverpool City Region Combined Authority (2019) *Fair Employment Charter Consultation Document* [online] available at: https://www.liverpoolcityregion-ca.gov.uk/wp-content/uploads/FEC_2019.pdf; Scottish Government (2019) *Scottish Business Pledge* [Online] [12 March 2019]. Available from: <https://scottishbusinesspledge.scot/>

⁵ Scottish Government (2018) ‘Fair Work First’ Announced by FM, Scottish Government Press Notice 09 October 2018.

⁶ BEIS (2018) *Good Work Plan* London: Department for Business, Energy and Industrial Strategy

⁷ Metcalf, D. (2018) *United Kingdom Labour Market Enforcement Strategy 2018/19*, London: Department for Business, Energy and Industrial Strategy

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⁸ OECD (2017) *OECD Guidelines on Measuring the Quality of the Working Environment*, Paris: Organisation for Economic Co-operation and Development. p14

⁹ This is discussed further in the Technical Annex.

¹⁰ The protected characteristics under the Equality Act 2010 are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

¹¹ The Real Living Wage (RLW) is a voluntary wage standard formulated and promoted by Citizens UK. The standard takes the form of an hourly rate of pay, based on independent research into the expenditure needs of low-wage employees, designed to provide a modest but decent standard of living. Organizations can be designated Living Wage Employers (LWEs) if they contract with the Living Wage Foundation to pay the RLW to all direct employees aged 18 and over, other than apprentices, and to ensure that a contractor’s employees based permanently on their premises, such as reception, security, cleaning and catering staff, are paid the rate. LWEs also give an undertaking to increase the pay of low-wage workers on an annual basis, following the announcement of the updated RLW rate each November.

¹² From 2020 companies with over 250 employees will be required to disclose annually the ratio of CEO pay to the median, lower quartile and upper quartile pay of their UK employees and to justify gaps between high and low earners.

¹³ Welsh Government (2018) Gov.wales [Online]. [12 March 2019]. *Review of Digital Innovation for the Economy and the Future of Work in Wales* Available from: <https://beta.gov.wales/review-digital-innovation-economy-and-future-work-wales>

¹⁴ Blanchflower, D., Costa, R., and Machin, S. (2017) *The Return of Falling Real Wages*, Centre for Economic Performance LSE London

¹⁵ E.g. Grimshaw, D., Johnson, A., Rubery, J., Keizer, A. (2014) *Reducing Precarious Work: Protective Gaps and the Role of Social Dialogue in Europe* DG Employment Social Affairs and Equal Opportunities VP/2014/004

¹⁶ Incomes Data Research (2018) *Minimum and Zero Hours Contracts for Low-Paid Staff*

¹⁷ Parken A. and Ashworth R. (2018) 'From evidence to action: Applying gender mainstreaming to pay gaps in the Welsh public sector' *Gender, Work and Organization* Special Issue 1–20.

¹⁸ Moore, S., Tailby, S., Antunes, B and Newsome, K.J. (2018) 'Fits and fancies: the Taylor Review, the construction of preference and labour market segmentation'. *Industrial Relations Journal*; Scherer, S. (2004) 'Stepping-Stones or Traps?: The Consequences of Labour Market Entry Positions on Future Careers in West Germany, Great Britain and Italy' *Work Employment and Society* 18:3,69-394.

¹⁹ Taylor, M., March, G., Nicol, D. and Broadbent, P. (2017), *Good Work: The Taylor Review of Modern Working Practices* London: Department for Business, Energy and Industrial Strategy; Low Pay Commission (2018) *Low Pay Commission Report: A Response to Government on One Sided Flexibility*

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²⁰ Davies, A.C.L. (2018) 'The Trade Union (Wales) Act 2017/Y Ddeddf Yr Undebau Llafur (Cymru) 2017' *Industrial Law Journal*, Vol 47(1), 135–148, provides a detailed examination of legislative competence.

²¹ Manfredi, S., Vickers, L. and Clayton-Hathway, K. (2018) 'The Public Sector Equality Duty: Enforcing Equality Rights through Second Generation Regulation' *Industrial Law Journal* 47(3) 365; EHRC (2014) *Review of the PSED in Wales* Cardiff: Equality and Human Rights Commission.

²² Parken A., and Ashworth R. (2018) 'From evidence to action: Applying gender mainstreaming to pay gaps in the Welsh public sector' *Gender, Work and Organization* Special Issue Article. 1–20.

²³ Davies, N., Furlong, C. and Wharf, H. (2018) *Rapid Review of Gender Equality 2018: Phase One Summary Report* Cardiff: Chwarae Teg

²⁴ See 'The Wales of the Possible' consultation on the Journey Checkers at: <https://futuregenerations.wales/news/we-want-your-views-on-the-journey-to-the-wales-of-the-possible%e2%80%af/> [accessed 12/03/19]

²⁵ See Welsh Government (2018) *Review of the Agricultural Sector Act 2014* Cardiff: Welsh Government

²⁶ See Guidance on the 'Workforce (two-tier) code of practice: standards for the public sector' available at: <https://beta.gov.wales/workforce-two-tier-code-practice-standards-public-sector>

²⁷ The First Minister set out his commitment to introduce a Social Partnership Act in his leadership manifesto of 2018.

²⁸ The Financial Reporting Council's revised UK Corporate Governance Code (2018) contains a new provision 'to enable greater board engagement with the workforce to understand their views'. Suggested options include a director appointed from the workforce and/or a formal workforce advisory panel. The Code asks boards to describe how they have considered the interests of stakeholders when performing their duty under Section 172 of the 2006 Companies Act.

²⁹ Equality, Local Government and Communities Committee (2018) *Work It Out: Parenting and Employment in Wales* Cardiff: National Assembly for Wales, Recommendation 34.

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- ³⁰ Lloyd, C. and Payne, J. (2016) *Skills in the Age of Over qualification: Comparing Service Sector Jobs in Europe* Oxford: Oxford University Press
- ³¹ For example Eurofound (2018) *Employment and working conditions of selected types of platform work*, Publications Office of the European Union, Luxembourg; Prosser, T. J. (2016) ‘Dualization or liberalization? Investigating precarious work in eight European countries’ *Work Employment and Society* 30(6) 949-965
- ³² Institute for Public Policy Research Commission on Economic Justice (2018) *Prosperity and Justice A plan for the new economy*, London: Polity Press
- ³³ Rubery, J. (2018) ‘The IPPR Commission on Economic Justice: the strategy for labour market reform’ *The Political Quarterly* vol. 89(4)
- ³⁴ For example Bales, K., Bogg, A. and Novitz, T. (2018) ‘‘Voice’ and ‘Choice’ in Modern Working Practices: Problems with the Taylor Review’ *Industrial Law Journal* 47(1) 46; see also *Industrial Relations Journal* Special Issue on Mathew Taylor’s Report on Modern Working Practices, vol 9 (5-6) November 2018.
- ³⁵ For example Ewing, K.D., Hendy, J. and Jones, C. (eds) (2016) *A Manifesto for Labour Law: Towards a Comprehensive Revision of Workers’ Rights* Liverpool: Institute of Employment Rights; Adams, Z. and Deakin, S. (2014) *Reregulating Zero Hours Contracts*, Liverpool: Institute of Employment Rights; Institute of Public Policy Research; Commission on Social Justice (2018) *Prosperity and Justice: A plan for the new economy*; Harcourt, M., Gall, G., Kuman, R.N. and Croucher, R. (2019) ‘A Union Default: a policy to raise union membership, promote freedom to associate, protect the freedom not to associate and progress union representation’ *Industrial Law Journal* 45(1) 66-97
- ³⁶ Davies, P. and Freedland, M. (1993) *Labour Legislation and Public Policy* Oxford: Clarendon Press
- ³⁷ BEIS (2018) *Good Work Plan* London: Department for Business, Energy and Industrial Strategy
- ³⁸ HMRC in respect of the national minimum wage/living wage; the Employment Agency Standards Inspectorate and the Gangmasters and Labour Abuse Authority which licenses and regulates employers in specific sectors and has powers in respect of modern slavery and certain labour market offences across all sectors. There is also state enforcement and inspection by the Health and Safety Executive but this not within the Director of Labour Market Enforcement’s remit. It may form part of the proposed single agency.
- ³⁹ BEIS (2018) *Good Work Plan* London: Department for Business, Energy and Industrial Strategy p.10
- ⁴⁰ See Dickens, L. (2012) ‘Fairer Workplaces: Making Employment Rights Effective’ in Dickens, L. (ed) *Making Employment Rights Effective: Issues of Enforcement and Compliance*. Hart, Oxford.
- ⁴¹ Dickens, L. (2014) ‘The Coalition government’s reforms to employment tribunals and statutory employment rights – echoes of the past’. *Industrial Relations Journal* 45(3)
- ⁴² Casebourne, J., Regan, J., Neathey, F. and Tuohy, S. (2006) *Employment Rights at Work – Survey of Employees 2005*, DTI Employment Relations Research Series No. 51, (London, Department of Trade and Industry).
- ⁴³ This is proposed in BEIS (2018) *Good Work Plan*
- ⁴⁴ See www.glaa.gov.uk

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- ⁴⁵ See, ‘Written Statement - Review of the National Procurement Service and Value Wales Commencement Order’, available at [13/03/2019]: <https://gov.wales/about/cabinet/cabinetstatements/2018/reviewofnpsvwcommenceorder/?lang=en>

⁴⁶ Drucker, J. and White, G. (2013) 'Employment relations on major construction projects: the London 2012 Olympic construction site', *Industrial Relations Journal*, 44(5-6): 566-583. Deakin, S and Koukiadaki, A. (2009) 'Governance processes, labour-management partnership and employee voice in the construction of Heathrow Terminal 5', *Industrial Law Journal*, 38(4): 365-389.

⁴⁷ See 'New Economic Contract for Businesses seeking Welsh Government support', Welsh Government Press Release. Available at [13/03/2019]: <https://beta.gov.wales/new-economic-contract-businesses-seeking-welsh-government-support> and Welsh Government (2017) *Prosperity for All: Economic Action Plan* Cardiff: Welsh Government.

⁴⁸ <https://tiscreport/Wales> [04 March 19] The figure of 51 public bodies given here includes the 4 police authorities and 4 Police and Crime Commissioners which are non-devolved.

⁴⁹ Dickens, L. (2012) 'Fairer Workplaces: Making Employment Rights Effective' in Dickens, L (ed) *Making Employment Rights Effective: Issues of Enforcement and Compliance*. Oxford: Hart p.223

⁵⁰ Organisations falling into this category would include local authorities, health boards, universities, fire and rescue services and other smaller organisations.

⁵¹ E.g. Hoque, K., Bacon, N. and Parr, D. (2014). Employer disability practice in Britain: assessing the impact of the Positive About Disabled People 'Two Ticks' symbol. *Work, Employment and Society*, 28(3), pp. 430-451

⁵² McCrudden, C. (2012) 'Procurement and Fairness in the Workplace' in Dickens, L. (ed) *Making Employment Rights Effective: Issues of Enforcement and Compliance*. Oxford, Hart

⁵³ For Community Benefits see: <https://prp.gov.wales/toolkit/?lang=en> and for Better Jobs Closer to Home: <https://gov.wales/oral-statement-update-better-jobs-closer-home-programme> and <https://gov.wales/our-valleys-our-future-delivery-plan>

⁵⁴ E.g. Harrison, D. and Edwards, C. (2018) *Making Procurement Work for All: Procurement Practice as a Route to fulfilling work in North East England* Dunfermline: Carnegie Trust

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⁵⁵ Available at:

<https://prp.gov.wales/docs/prp/toolkit/june15walesprocurementpolicystatement2015v1.pdf> [accessed 20 March 2019]

⁵⁶ Summarised by Dromey, J. (2018) *Power to the People: how stronger unions can deliver economic justice* IPPR; see also successive WERS surveys discussed in Brown, W. A. et al (2009) *Evolution of the Modern Workplace* Cambridge: Cambridge University Press

⁵⁷ Summarised in Moore, S., Onaran, O., Guschanski, A., Antunes, B., Symon, G. (2019) 'The resilience of collective bargaining – a renewed logic for joint regulation?' *Employee Relations: The International Journal* Vol. 41(2) pp.279-295 <https://doi.org/10.1108/ER-09-2018-0256>

⁵⁸ Haldane, A. (2018) 'Pay power', speech to the Acas Future of Work Conference, 10 October, London. Available at: <https://www.bankofengland.co.uk/speech/2018/andy-haldane-advisory-conciliation-and-arbitration-service-future-of-work-conference>

⁵⁹ Bryson, A and Forth, J. (2017) *The added value of trade unions*, Trades Union Congress.

⁶⁰ Dabla-Norris, E., Kochhar, K., Suphaphiphat, N., Ricka, F. and Tsounta, E. (2015) *Causes and consequences of income inequality: A global perspective*, International Monetary Fund, cited in Dromey, J. (2018) *Power to the People: how stronger unions can deliver economic justice* London IPPR

⁶¹ Podro, S. and Suff, R. (2010) cited in Terry, M. and Colling, T. (eds) *Industrial Relations Theory and Practice 3rd Edition* Oxford: Wiley p293

⁶² Dickens, L. (2012) 'Fairer Workplaces: Making Employment Rights Effective' in Dickens, L. (ed) *Making Employment Rights Effective: Issues of Enforcement and Compliance*. Oxford: Hart

⁶³ Dickens, L. and Hall, M. (2006) 'Fairness – up to a point. Assessing the impact of New Labour's employment legislation' *Human Resource Management Journal*, 16: 338-356; Colling, T. (2012) 'Trade Union Roles in Making Rights Effective' in Dickens, L. (ed) *Making Employment Rights Effective. Issues of Enforcement and Compliance* (Hart, Oxford)

⁶⁴ Fredman, S. and Morris, G. (1989) *The State as Employer: Labour Law in the Public Services* London: Mansell

⁶⁵ Dickens, L. and Hall, M. (2010) 'The Changing Legal Framework of Employment Relations', in Terry, M and Colling, T. (eds) (2010) *Industrial Relations Theory and Practice* Oxford: Wiley p293

⁶⁶ Hall, M. and Purcell, J. (2012) *Consultation at Work* Oxford: Oxford University Press

⁶⁷ Welsh Government (2018) *Employability Plan Progress Report 2018* Cardiff: Welsh Government p19

⁶⁸ Stuart, M., Cutter, J., Cook, H., Valizade, D., and Garcia, R. (2016) *Evaluation of the Union Learning Fund rounds 15-16 and support role of Unionlearn Final report 2016*. University of Leeds

⁶⁹ Dickens, L. (1999) 'Beyond the business case: a three pronged approach to equality action' *Human Resource Management Journal* vol 9(1) 9-19; Heery, E. and Abbott, B. (2000) 'Trade Unions and the Insecure Workforce' in Heery, E. and Salmon, J. (ed) *The Insecure Workforce* Routledge.

⁷⁰ Forth, J and Lucio Martinez, M. (2014) *Union Modernisation Fund: Round Three Evaluation* Employment Relations Research Series, BIS

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⁷¹ See for example: Sisson, K. (2016) 'Shaping the World of Work – time for a UK jobs strategy' *Warwick Papers in Industrial Relations Series* no. 105, Industrial Relations Research Unit, University of Warwick; Felstead, A., Gallie, D., Green, F. and Henseke, G. (2018) *Productivity at Work: the Workers' Perspective – First Findings of the Skills and Employment Survey 2017* London: Centre for Learning and Life Chances in Knowledge Economies and Societies, UCL Institute of Education; Hunt, V., Prince, S., Dixon-Fyle, S. and Yeo, L. (2018) *Delivering Through Diversity*, London: McKinsey & Company; Low Pay Commission (2018) *National Minimum Wage: Low Pay Commission Report 2018, cm 9717*, London: HMSO; Appelbaum, E., Bailey, T., Berg, P., and Kalleberg, A. (2000) *Manufacturing Advantage: Why High-Performance Work Systems Pay Off*. Ithaca, NY: Cornell University Press; Bryson, A. and Forth, J. (2015) 'The UK's productivity puzzle', *National Institute for Economic and Social Research Discussion Paper No. 448*, London: NIESR.

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⁷² Freedland, M. and Kountouris, N. (2006) 'The Institutional Face at Ministerial Level: Not the Department of Employment' in L. Dickens and A.C.Neal *The Changing Institutional Face of British Employment Relations* (Kluwer Law International)

⁷³ See for example Hayes, L. (2017) *8 Good Reasons Why Adult Social Care Needs Sectoral Collective Bargaining* Liverpool: Institute of Employment Rights

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⁷⁴ Carnegie UK Trust (2018) *Measuring Good Work: The Final Report of the Measuring Job Quality Working Group*, Dunfermline: Carnegie Trust

⁷⁵ BEIS (2018) *Good Work Plan* London: Department for Business, Energy and Industrial Strategy p58

⁷⁶ This is demonstrated in Brown, W. A. et al (2009) *Evolution of the Modern Workplace* Cambridge: Cambridge University Press

⁷⁷ Welsh Government (2019) *How do we assist Welsh Ministers in measuring a nation's progress?* Consultation document WG36970 Available at:
<https://beta.gov.wales/sites/default/files/consultations/2019-01/consultation-national-milestones-new.pdf>

⁷⁸ Welsh Government (2014) *Chief Statistician's Update, Issue 3*, Cardiff: Welsh Government p1

APPENDIX

Appendix: The Labour Market in Wales

To provide a picture of the key features of the labour market in Wales today, we draw on a number of sources of evidence: submissions made to the Fair Work Commission, secondary analysis of labour market data and published reports. Taken as a whole, the evidence suggests that unfair work is a feature of the Welsh labour market and that corrective action needs to be taken.

The features of the labour market identified are reported under three headings: (1) economic activity, employment composition and projections of change; (2) low pay, inequality, insecurity/non-standard work and low productivity; and (3) trade unions, collective bargaining, individual voice and managerial support.

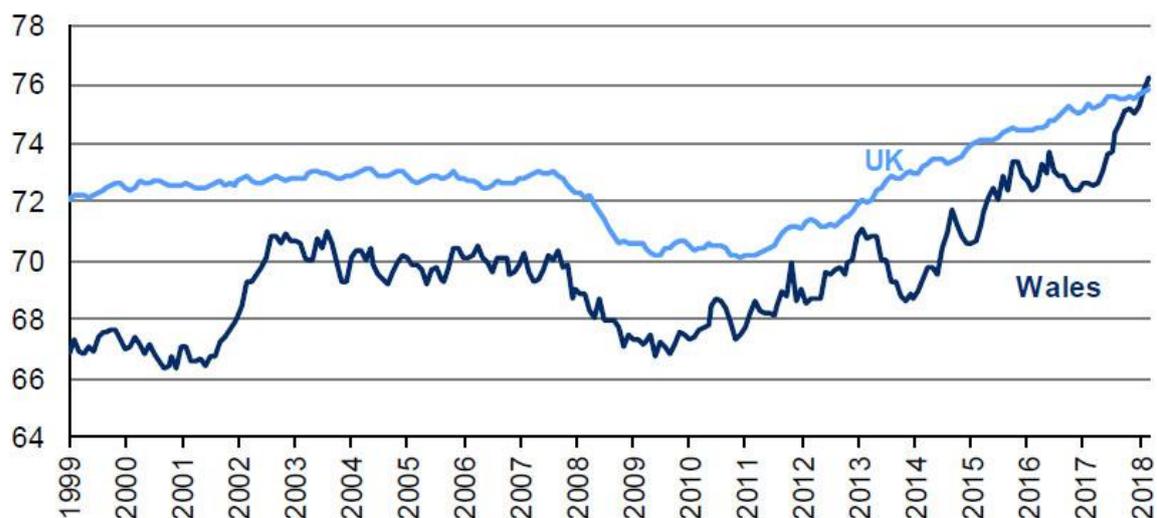
1. Economic Activity, Employment Composition and Projections of Change

Economic Activity

In the third quarter of 2018, the employment rate in Wales – the proportion of people aged 16-64 who were in paid employment – was 75% and within touching distance of the UK rate. This was ‘the highest employment rate Wales has seen since comparative records began’¹. The data for the fourth quarter show a further relative improvement with the employment rate in Wales reaching 76% and outpacing the rate for the UK for the first time since comparable records began².

Figure A1:

Employment rate (percentage of population age 16-64)



Source: Welsh Government (2019) 'Key Economic Statistics – February 2019'. Statistical Bulletin, SB 6/2019, Cardiff: Welsh Government: 1.

The employment rate has risen among men and women in Wales, whereas in the UK taken as a whole it has risen among women but has risen more slowly among men. As a result, the employment rates for men and women in Wales towards the end of 2018 were either very close (for men) or exceeded those in the UK (for women).

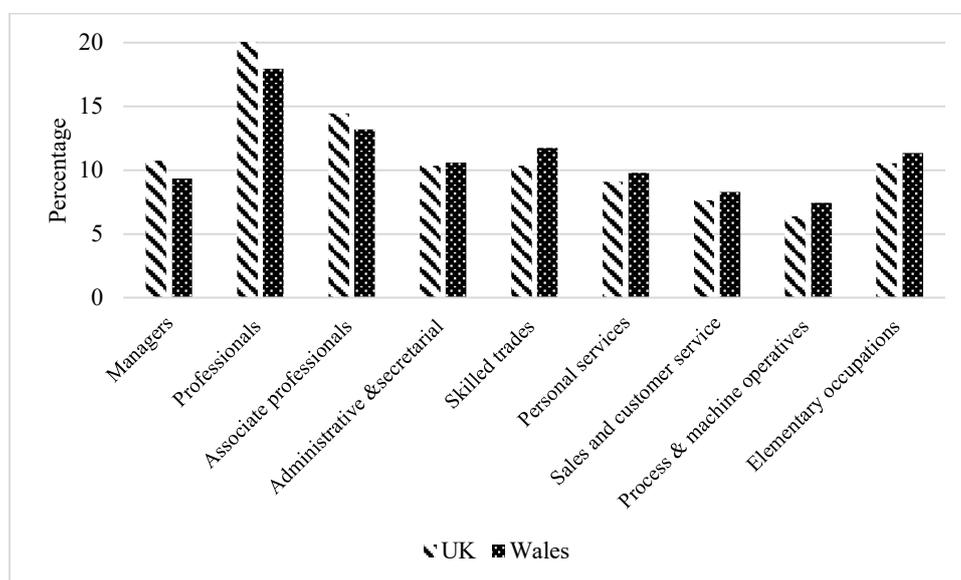
Economic inactivity has similarly improved with the proportion of working age adults who do not want a job or unable to take up a job falling to 20% in Wales compared to a similar proportion across the UK. This is a dramatic change from 2014 when Wales lagged behind the UK by around four percentage points. The unemployment rate in Wales is also now similar to that in the UK, whereas in the past it has often been higher³. However, despite rising employment, 24% of people in Wales were estimated to live in poverty in 2016-17, up one percentage point on the figure recorded for the last five years⁴.

Employment Composition

The pattern of work in Wales differs in other ways too, as shown in Figure A2. For example, there are proportionately fewer high ranking jobs – those in the top three occupational categories – and more mid and lower ranking jobs. The balance of employment in Wales is therefore skewed more towards the bottom than the top ranking jobs by five percentage points.

Figure A2:

Occupational Profile of Wales and the UK, 2018



Source: derived from data downloaded from www.statswales.gov.wales

One of the defining characteristics of the Welsh economy since the late 1970s has been the structural shift away from heavy industries, such as coalmining and steel production, towards services. In 1992, almost 250,000 people or one in five of the working population were employed in manufacturing, but by 2002 this had fallen to 210,000 or 16% of the workforce⁵.

By 2017, manufacturing had shrunk even further, employing less than one in ten workers, a similar proportion to the UK. As shown in Table A1, Wales is more reliant on agriculture, construction, distribution and public administration such as central and local government than the UK as a whole. It is far less reliant on banking and finance which accounts for 18% of jobs across the UK, but only 13% of jobs in Wales.

Table A1:
Industrial Profile of Wales and the UK, 2018

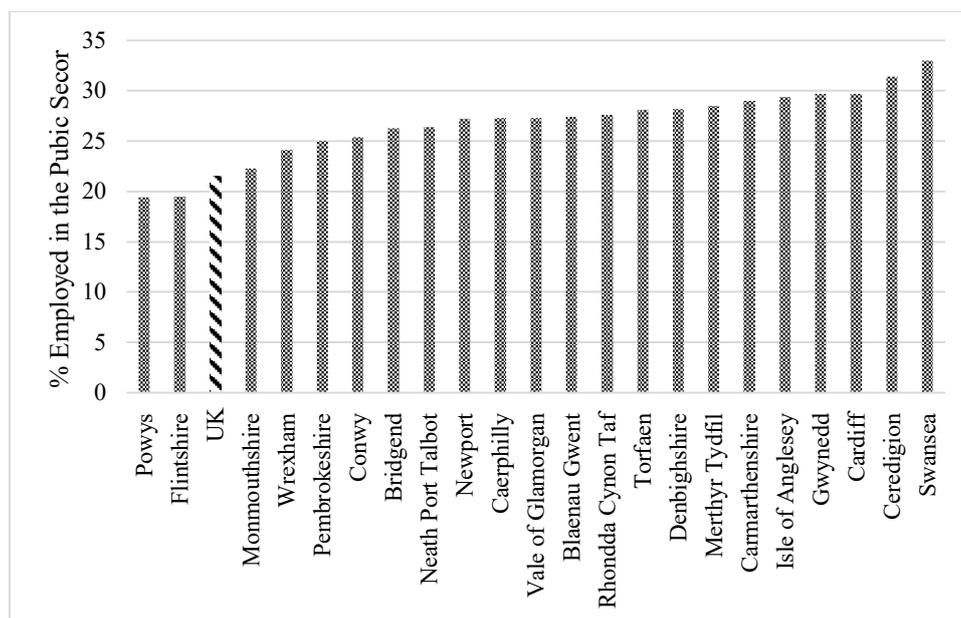
Industry	Wales (%)	UK (%)
Agriculture, forestry and fishing (A)	1.9	0.8
Energy and water (B,D,E)	2.1	1.9
Manufacturing (C)	9.1	8.9
Construction (F)	8.7	7.2
Distribution, hotels and restaurants (G,I)	20.9	18.6
Transport and communication (H,J)	6.3	9.1
Banking and finance (K,L,M,N)	12.5	17.7
Public administration, education and health (O,P,Q)	33.2	30.2
Other services (R,S,T,U)	5.4	5.6

Source: own analysis of quarter 3 of the Labour Force Survey 2018.

Notably, 20 out of 22 local authorities (LAs) in Wales have an above average reliance (relative to the UK) on the public sector as an employer (see Figure A3). A third of all workers in Swansea, for example, are employed by public sector bodies. This means that policies affecting the public sector, such as wage freezes, restrictions on pay increases and budget restrictions, imposed by the UK Government, have a disproportionate effect on jobs in Wales as well as a disproportionate effect within Wales. By the same token, progressive policies such as the public sector promoting and leading by example on fair work will have a disproportionately positive effect. Similarly, actions taken in the public sector will have a greater effect on women than men since women make up two-thirds of those working in the Welsh public sector.

Figure A3:

Public Sector Employment by Local Authority in Wales and the UK Average, 2018



Source: derived from data downloaded www.statswales.gov.wales

A common measure of available skills in the labour market is the stock of qualifications held by those working age. The proportion of working aged adults who have no qualification is higher in Wales than in the UK (9% versus 8%) and the proportion with a higher education qualification (that is, Higher National Certificate and above) is lower (37% versus 41%). The stock of available skills in Wales is therefore lower than in the UK⁶.

Furthermore, there is pronounced regional variation in formal qualification levels. For example, 16% of working age adults in Merthyr Tydfil have no qualifications. This is almost double the Welsh average (9%) and three times the proportion with no qualifications in the Vale of Glamorgan (5%). This is reflected at the other end of the qualification scale with only 5% of those living in Blaenau Gwent holding a postgraduate qualification compared to 18% of Cardiff residents.

Projections of Change

Forecasts suggest that the number of professional, associate professional and technical jobs (i.e. higher skilled occupations) will grow rapidly over the next decade in Wales. The increase in professional, associate professional and technical jobs is a continuation of longer-term trends, with this group projected to account for two-fifths of employment in Wales by 2024 compared to three-tenths in 1994. However, Wales will be outpaced by the UK where high skilled jobs are forecast to make up almost a half of all jobs by 2024⁷.

In addition to higher skilled occupations, a large increase in employment is projected for caring and personal service occupations (e.g. care workers and childminders). This reflects the ageing population and follows occupational growth over the last ten years – rising from

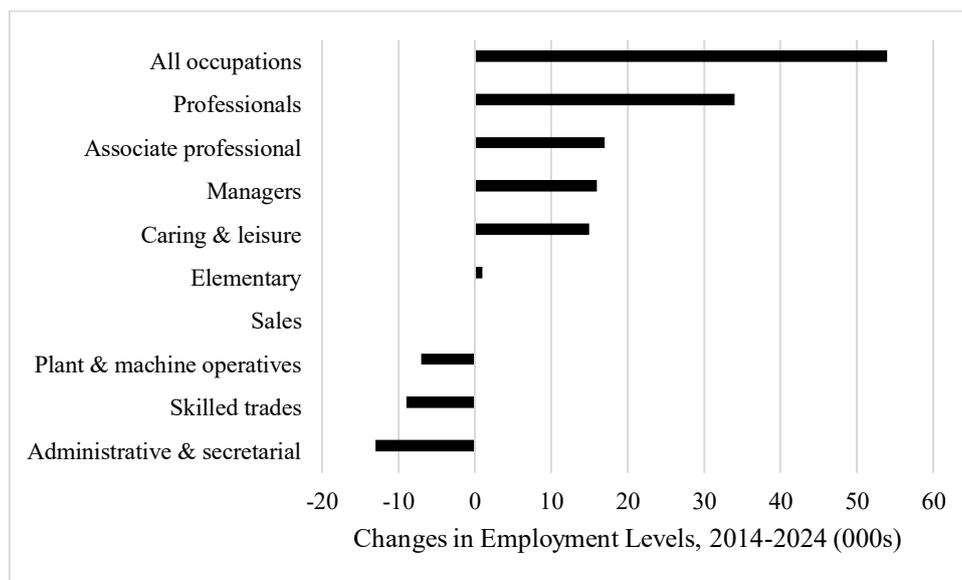
97,800 in 2004 to 123,300 in 2014 and projections are that it will rise to 138,200 by 2024. Customer service occupations (e.g., call centre operators) are projected to see the largest percentage rise of all occupations – an increase of 21% between 2014 and 2024, rising from 24,400 to 29,400 jobs in Wales. Women account for a large majority of these growing occupational groups.

Among mid-skill level occupations, a sharp decline of 31% is projected for secretarial and related occupations (a net loss of 10,800). Losses of 13%, 9% and 8% are projected for the following: skilled agricultural and related trades; skilled metal, electrical and electronic trades; and textiles, printing and other skilled trades.

For occupations classified as lower skilled growth projections are mixed. As noted above, high levels of growth are projected for caring and personal service occupations and customer service occupations. However, considerable losses are projected for process, plant and machine operatives (11%) and sales occupations (6%)⁸.

Figure A4:

Future Changes in Employment by Occupation in Wales, 2014-2024



Source: derived from data in UKCES (2016) UKCES Labour Market Projections for Wales: 2014 to 2024, Wath-upon-Derne. UK Commission for Employment and Skills: Table 4.1.

There are also suggestions that many of today’s jobs will not exist at all in their current form with the growth of Artificial Intelligence. Recent estimates suggest that one in three jobs in Wales are at risk of being automated by the early 2030s and that entirely new jobs will be created as a result of the fourth industrial revolution⁹. The implications of these changes are likely to be profound and will need to be monitored in order to prevent jobs of the future becoming unfair. These issues are being examined by the Welsh Government’s *Review of Digital Innovation for the Economy and the Future of Work in Wales* with a final report due later in 2019.¹⁰

Low pay is also distributed unevenly by industry with parts of the foundational economy, such as tourism, food, retail and care, having high concentrations of low paid work. For example, the Resolution Foundation estimates that across the UK two-thirds of those working in hotels and restaurants were paid less than the RLW in 2017 and two-fifths of those in wholesale and retail were similarly lowly paid¹³.

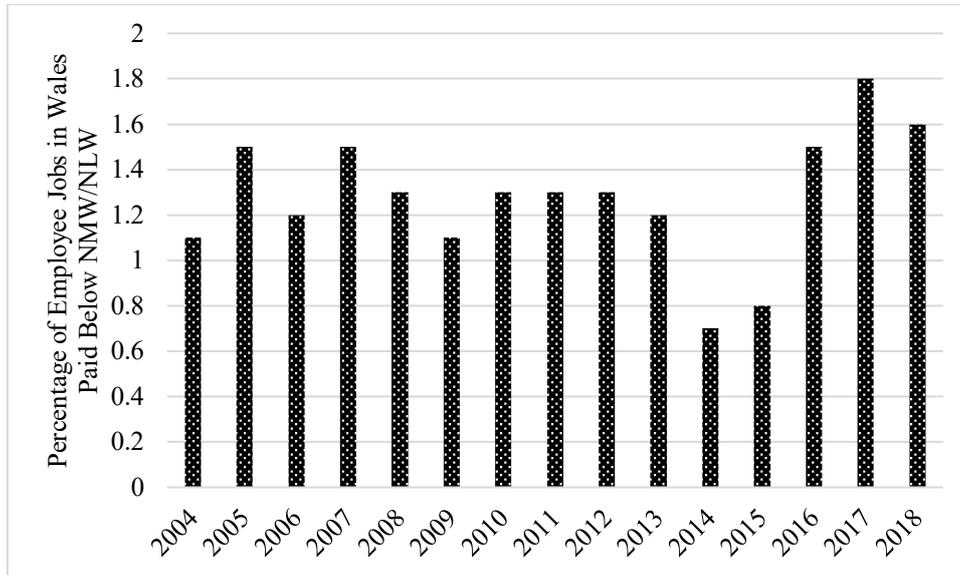
Poverty rates in Wales are high. In 2016-17, one in five (24%) people in Wales were in households which had a total income below 60% of median household income. This is higher than the poverty rate recorded for England, Scotland and Northern Ireland. Furthermore, without policy change, it is predicted that there will be a three percentage point increase in the proportion of people living in poverty in Wales by 2021-22. This is the third highest increase of all regions/countries in the UK, behind only Northern Ireland and the North East¹⁴. Furthermore, in-work poverty is rising faster in Wales than in the UK¹⁵.

To help lift workers out of low pay and reduce poverty the Living Wage Foundation accredits organisations that agree to pay the RLW to their direct employees and to the employees of contractors who normally work on their premises¹⁶. By the end of 2018, the number of accredited RLW employers in Wales was 179. However, in Scotland the equivalent figure was much higher at 1,403, no doubt helped by the Scottish Government's financial support to the Poverty Alliance which took over the accreditation scheme in 2014.

There is also evidence that some employers are not even paying their workers the statutory National Living Wage/National Minimum Wage which is a lower rate than the RLW. In July 2018, 239 employers were found by Her Majesty's Revenue and Customs (HMRC) to have underpaid 22,400 workers and were ordered to give £1.4 million in back pay to their workers and pay fines totalling almost £2 million. Of the 239 employers named, 13 were located in Wales. Using ONS data, it is possible to provide robust estimates of the extent of the failure to give this legal right substantive effect. On this evidence, around 19,000 employees in Wales (1.6%) were not receiving their statutory entitlement in 2018 (Figure A6). Wage theft of this sort is a persistent feature of the Welsh labour market with the number of employers flouting the law far exceeding the number currently 'named and shamed' by HMRC and forced to make amends.

Figure A6:

Employee Pay Below Statutory Minimum Thresholds, Wales, 2004-2018



Source: Smith, R (2018) 'Jobs paid below the minimum wage by category' Data Release. Newport. Office for National Statistics: Table 3a.

Inequality

There are various forms of inequality in the Welsh labour market. According to the Equality and Human Rights Commission (EHRC), the employment rate in Wales in 2016-2017 for non-disabled people (73%), for example, was more than double the rate for disabled people (35%) and when in work disabled people are less likely to be found in managerial or professional occupations, which tend to have high pay¹⁷.

Women are more likely than men to work in caring, leisure and other service occupations, or sales and customer service occupations, or elementary occupations, which tend to have low pay. However, similar proportions of women and men are found in higher paying occupations.

There are also inequalities in apprenticeships. The 2016 Apprenticeship Survey found that there were large differences in pay by apprenticeship framework in Wales, with the basic hourly pay rate for Level 2 and 3 apprentices being lowest in the female-dominated hairdressing framework¹⁸. Furthermore, there are strong patterns of gender segregation and ethnic minorities and disabled people are less likely to be apprentices¹⁹.

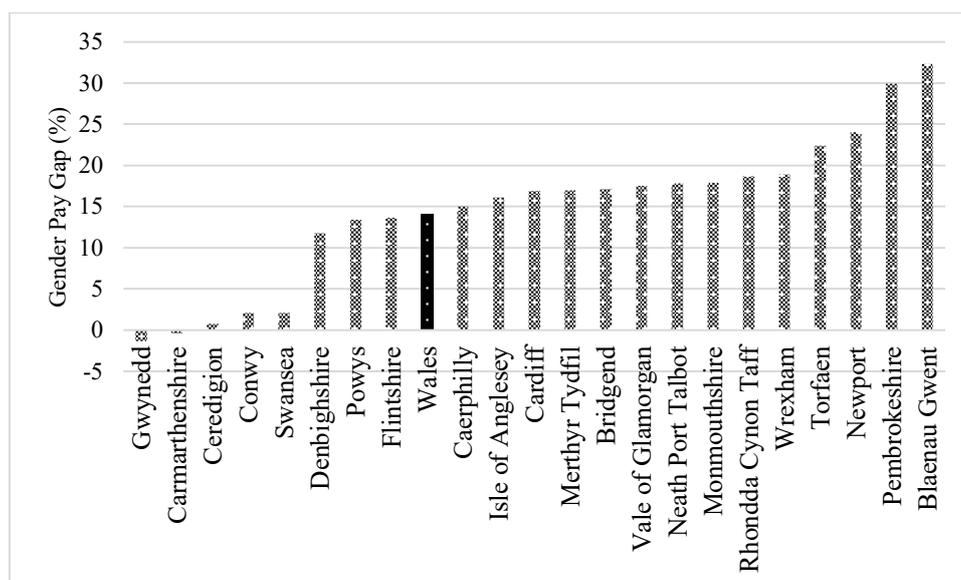
According to a joint survey commissioned by EHRC and the Department for Business, Innovation and Skills and carried out in 2016 71% of mothers in Wales reported having had a negative or possibly discriminatory experience during pregnancy, maternity leave or on their return from maternity leave. However, this was a lower proportion than for Britain as a whole (77%). Nevertheless, nearly half of mothers in Wales (48%) reported this experience

had a negative impact on their opportunities for development, their status within the organisation and/or their feelings of job security²⁰.

In Wales the gender pay gap in 2018 – as measured by the difference in the median gross weekly pay for full-time work – was 14 percentage points. The gender pay gap is large, but narrower than elsewhere. However, this is largely because male full-time earnings are relatively low and not because women’s earnings are higher than elsewhere²¹. According to Welsh Government, male full-time earnings in 2018 were the second lowest of all UK countries and regions, and were well below the UK average²². Furthermore, as indicated in Figure A7, the gender pay gap varies across Wales, ranging from 32.3 percentage points in Blaenau Gwent to virtual parity or better in Gwynedd, Carmarthenshire and Ceredigion. The gender pay gap in Wales is also below the UK average when measured by the gross median hourly pay received by full-time workers – in 2018 it was 29.7 percentage points in Wales compared to 33.1 in the UK. However, the gender pay gap among part-timers in Wales is on a par with the gap found in the UK as a whole with women getting paid around 4% more per hour than male part-timers.

Figure A7:

Gender Pay Gap Across Wales, 2018



Source: derived from data downloaded from <https://www.nomisweb.co.uk/>.

All those with protected characteristics have a lower chance of being in paid employment and when they are in work it is often on poorer terms and conditions. For example, 11% of UK workers in 2017 were employed in ‘elementary’ occupations, the lowest skilled type of occupation, while Black, Mixed, and Other ethnic groups had a higher than average percentage in such occupations (at 14% each). Similarly, while 15% of workers in the UK were self-employed, workers from the Pakistani/Bangladeshi ethnic group were more likely to be self-employed and Black workers were least likely to be similarly engaged²³.

Such inequalities are costly to the UK economy. Estimates from McKinsey & Company (2016), for example, suggest that the pay gap costs the UK economy £150 billion per year in lost output since women are disproportionately located in less productive jobs and are less likely to be in jobs in any case. As a whole, companies that have high levels of ethnic and gender diversity across their workforce and at board level are more profitable. Companies in the top quartile for ethnic diversity are 33% more likely to achieve above industry average profit margins than those with little ethnic diversity. Companies with the most ethnically diverse boards are 43% more likely to outperform their less diverse counterparts in terms of profitability²⁴.

Insecurity/Non-standard Work

Estimates taken from official data suggest that in 2018 around 2.5% of the workforce in Wales was employed on a zero-hours contract. This is marginally higher than the UK average of 2.4%, but nevertheless accounts for an estimated 36,900 workers in Wales. They create insecurity for those involved and are located in particular sectors such as social care²⁵. UK level data suggests that these contracts are disproportionately held by the young, the less well qualified and those working in certain parts of the economy such as accommodation and food, where almost a quarter of all zero-hours contracts can be found²⁶. However, evidence suggests that insecurity is a more widespread phenomenon which extends beyond zero-hours contracts. Uncertainty over unexpected changes to hours of work is more prevalent with two and a half times as many workers in Britain reporting this type of insecurity than those on zero-hours contracts²⁷.

Self-employment has also grown and is at its highest level for 15 years accounting for 15% of those in work in the UK. Around 38% of jobs growth in Wales between 2007 and 2016 has come from self-employment and in absolute terms this represents an increase from 161,000 to 176,000 in the space of a decade.

However, although sometimes celebrated, self-employment does have drawbacks. There is, for example, evidence of a long-hours culture amongst the self-employed in Wales which is particularly striking when compared with those who are employed. Working hours in excess of 48 hours a week is three times more common among the self-employed in Wales than it is among employees (30.1% versus 9.0%), and it is particularly high in rural Wales where over a third work more than 48 hours a week²⁸.

There is also evidence that the self-employed are poorly paid – in 2016, full-time male and female self-employed earned 68.1% and 56.8% less respectively than their employee counterparts²⁹. HMRC data shows that that self-employed women earn less than self-employed men and less than employed women – the average income of a self-employed woman in Wales in 2015-2016 was £13,971, lagging behind the average income of self-employed men (£17,234) and employed women (£21,682). Income data also show that since 2001 the earnings gap between employees and the self-employed has widened as employee incomes have grown faster than those of the self-employed.

Furthermore, there is evidence that since the 2008-2009 recession, the quality of self-employment has deteriorated with task discretion and skills used at work falling. The rise in the self-employed has disproportionately come from those with recent experiences of unemployment suggesting that many have become self-employed in response to the scarcity of jobs rather than the attractions of becoming self-employed³⁰.

The recession has also been associated with the growth in underemployment, that is, a situation where the number of working hours falls short of desired levels. For example, in the second quarter of 2008 around 2.7 million employees in the UK reported that they wanted to work longer hours, five years later this had risen to 3.8 million employees. Data also show that in the second quarter of 2008 679,000 of those who worked part-time said they would prefer to have a full-time job, by 2012 this had risen to 1.4 million. Since then both forms of underemployment have fallen, but they still remain high with 3.2 million employees wanting to work longer and 881,000 part-timers wanting a full-time job according to the latest figures for 2018³¹. This suggests that workers remain in a relatively weak bargaining position.

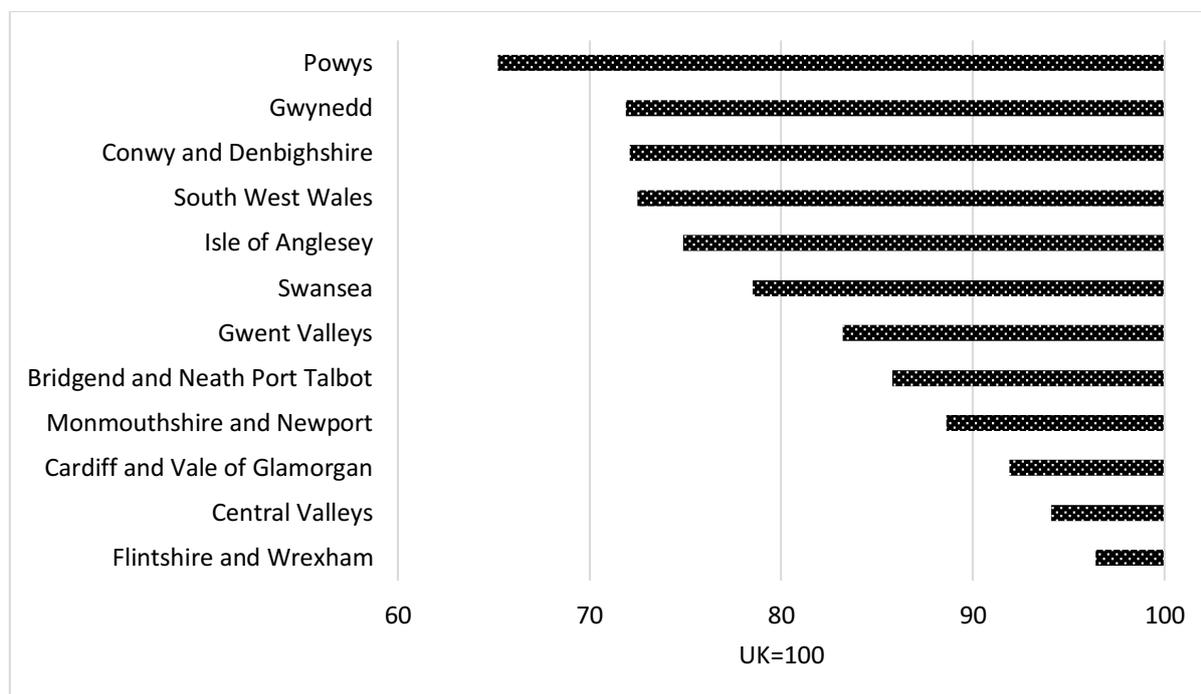
A more recent phenomenon – often associated with self-employment – is the growth of the ‘gig’ economy, that is, the exchange of labour for money between individuals or companies via digital platforms or what are known as apps. BEIS estimates that in 2017 4.4% of the adult British population had worked in the gig economy in previous 12 months. This equates to around 2.8 million people. Providing courier services was the most common type of gig economy activity (42%). Also popular was the provision of transport services (28%) and food delivery services (21%). One in four gig workers reported that they earned an hourly income of less than £7.50 per hour (the National Living Wage for 25 year olds in 2017) and the level of annual earnings from the gig economy was relatively low with 41% saying that they earned less than £250 a year. However, fewer than one in ten respondents (8%) said the money earned in the gig economy was their main source of income. Other research suggests that gig economy work is intense, offers little scope for collective voice and is insecure given workers’ dependency on the platform and the importance of customer ratings in getting future work³². However, gig economy working is unevenly spread across the UK with a quarter (24%) of such workers living in London and one in twenty (4%) living in Wales, making it a slightly under-represented feature of the Welsh labour market³³.

Low Productivity

Low productivity, on the other hand, is a key feature of the Welsh labour market. The scale of the challenge is recognised by Welsh Government in its economic strategy, *Prosperity for All: Economic Action Plan* ‘Wales faces a productivity issue, with output per hour worked in Wales the lowest of all UK nations and regions’³⁴. In fact, Wales has the joint worst productivity record in the UK, along with Northern Ireland with all regions within Wales coming below the UK average. As shown in Figure A8, in 2017 the sub-region with the highest level of labour productivity was Flintshire and Wrexham in North Wales, with a productivity level 3% below the UK average, followed at 6% by the Central Valleys. The lowest labour productivity performance was in the rural sub-region of Powys, with productivity 35% below the UK average, the lowest level in across all sub-regions in the UK.

Figure A8:

Labour Productivity in Wales by Sub-region, 2017



Source: Prothero et al. (2019) 'Regional and Sub-regional Productivity in the UK: February 2019' Newport. Office for National Statistics.: Figure 12.

The incidence of training is regularly used as the key barometer with which to measure investment in skills development and hence boost productivity. Evidence suggests that participation rates were highest across all four nations in the early 2000s and have been on the decline since well before the recession of 2008-2009 which, some feared, might have prompted a cut in training activity. Notably, since 2002 training rates in Wales have been higher than those elsewhere in the UK every year – with the gap with England, for example, approaching two percentage points on occasion³⁵.

The greater incidence of training in Wales is reflected in estimates of employers' training expenditure. Data from the Employer Skills Survey 2017 suggest that in Wales spend per trainee in 2017 was £2,790, while in the UK it was £2,470³⁶. Nevertheless, according to 2015 evidence annual training expenditure varies within Wales from a high of £3,200 per trainee in South East Wales to a low of £2,000 in South West Wales³⁷.

Evidence from the Skills and Employment Survey 2017 shows that efficiency-enhancing ideas are more frequently offered and acted upon in organisations where employee involvement is high³⁸. Such employers allow employees more autonomy to decide how to do their jobs, are more supportive of those they manage, give employees more opportunity to express their views, and carry out appraisals which affect employees' earnings and/or training opportunities. Moreover, employees are more likely to consider their organisations fair where they are given significant say over the way they work, where supervisors provide adequate support in periods of high work pressure and where they feel secure in the jobs. In

return, employers reap the benefits of increased organisational commitment, voluntary work effort and enthusiasm at work³⁹. Since many of these features of work are higher in Wales than in Britain as a whole, it is surprising that productivity in Wales is so low. One possible explanation is that on average workers in Wales possess lower skills and qualifications and have to work with poorer tools and equipment⁴⁰.

3. Trade Unions, Collective Bargaining, Individual Voice and Managerial Support

Trade union membership has been in decline since the late 1970s. Between 1995 and 2017, for example, there was a 14 percentage point drop in the proportion of employees who were trade union members in Wales.

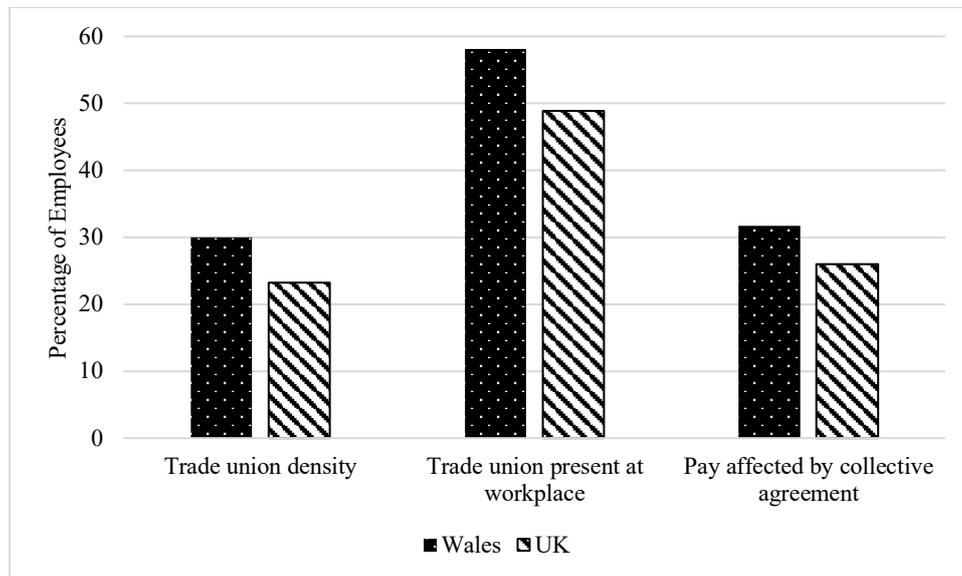
Nevertheless, trade unions still represent a significant proportion of employees in Wales. In 2017 the Department for Business, Energy and Industrial Strategy (BEIS) estimated that 30% of employees in Wales were a member of a trade union compared to 23% in the UK. This is the fourth highest level of trade union density across 20 geographical regions of the UK. This equates to trade unions representing 352,000 employees in Wales⁴¹. The proportion of employees reporting the presence of a trade union at their place of work is higher at 58%. Once again, Wales comes fourth highest across regions of the UK.

A further aspect of trade union influence at work is whether collective agreements between the employer and the union directly affects employees' terms and conditions regardless of whether they are a trade union member or not. Wales comes seventh out of 20 geographical regions in the UK with 32% of employees reporting that their pay is directly affected by collective agreements negotiated by trade unions⁴².

These patterns reflect the importance of public sector employment (cf. Figure A3) to the Welsh economy and the stronger tradition of trade unionism in Wales than elsewhere⁴³.

However, those most in need of collective representation are those least likely to be in a trade union – the so-call representation gap. For example, those under 30 and working in the lowest-paid jobs in the private sector are 26 times less likely to be members of a trade union than those over 50 and in highly paid jobs in the public sector. Furthermore, the ratio has increased by almost a third since the turn of the century⁴⁴.

Figure A9:
Trade Unions in Wales and the UK, 2017

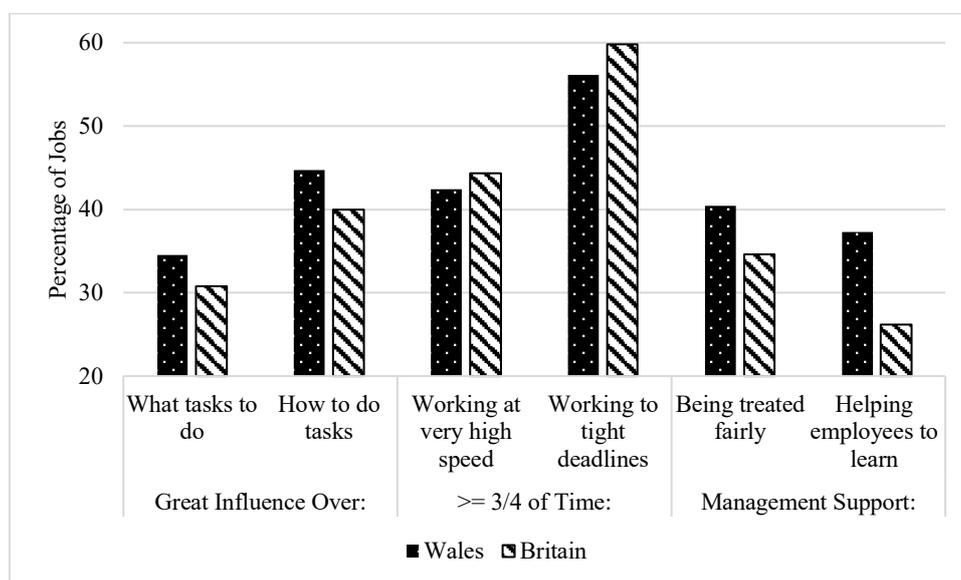


Source: derived from BEIS (2018) 'Trade Union Membership 2017: Statistical Bulletin'. London. Department for Business Energy and Industrial Strategy: Tables 4.1 4.2 and 4.3.

Individual voice and line management support are also reported as stronger in Wales than elsewhere. Evidence from the Skills and Employment Survey shows that in 2017 employees in Wales reported that they had more discretion over what tasks were to be done and how they were to be completed – for example, 40% of employees in Britain reported a great deal of influence over how they carry out their work tasks compared to 45% of employees in Wales (Figure A10). Jobs were also reported to be less intense with working at high speed and working to tight deadlines reported less frequently – 2-3 percentage points separate Wales from the British average. In addition, employees in Wales reported that line management was better at treating employees fairly and developing the skills of those in their charge. That said, job stress is higher in Wales than elsewhere with workers more likely to report worrying about work, feeling used up and having difficulty unwinding at the end of the working day⁴⁵.

Figure A10:

Individual Voice, Work Intensity and Line Management Support in Wales and Britain, 2017



Source: own calculations and Felstead and Davies, 2019.

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TECHNICAL ANNEX

Technical Annex: Tracking Fair Work in Wales

The policy goal of making Wales a fair work nation poses a number of challenges for those charged with tracking progress, celebrating success and identifying where more concerted action is required. In this Technical Annex, we discuss two of these challenges: (1) what is meant by fair work; and (2) what data sources are needed to track progress.

Characteristics

The Fair Work Commission definition of fair work addresses the first major challenge head-on. It comprises six characteristics: (1) fair reward; (2) employee voice and collective representation; (3) security and flexibility; (4) opportunity for access, growth and progression; (5) a safe, inclusive and healthy working environment; and (6) legal rights respected and given substantive effect. Underpinning this definition is the idea that there are a variety of job attributes which have the capacity of enhancing or reducing well-being. It therefore follows that a single metric will not suffice. This dashboard approach means that one characteristic cannot be traded off against another, and that all characteristics need to be present for jobs and/or employers to be regarded as fair¹

The Fair Work Commission's definition focuses on the attributes of the job occupied by the worker or provided by the employer and not the workers' personal circumstances and/or background. The distinction here is between the subjective and objective aspects of the job. The subjective approach is based on the idea that what is important is the 'utility' a worker derives from his or her job. This depends on two factors: the objective features of the job, such as the pay, the hours and the type of work, but also on each worker's preferences. What one worker feels about a job may differ from the feelings of another. What workers consider 'fair', therefore, varies according to differences such as gender, ethnicity, region and age. For example, research has shown that women are more satisfied with their jobs than men, low paid workers are just as satisfied with their jobs as those who are highly paid, and job satisfaction falls and then rises with age². Furthermore, since job satisfaction can be increased either by improving jobs or lowering expectations, it has been suggested that while the latter may increase job satisfaction it will not change the capacity of the job to enhance well-being³.

Collecting data on workers' feelings, such as job satisfaction or evaluations of their training and earnings, may be useful for certain purposes. For example, job dissatisfaction leads to workers quitting jobs when it would be better to improve them. However, satisfaction and evaluation measures are affected by individual differences in aspirations and have the shortcoming that workers may not be aware that certain aspects of the job may pose risks to their psychological and/or physical health. The OECD recommends prioritising collecting data on features of work that are, in principle, observable by a third party rather than being based, in part, on individual preferences and circumstances, and hence are more objective measures⁴.

Data Sources

The second major challenge is the identification of data sources which have the potential to allow progress on fair work to be tracked using the definition proposed. This is additional to the type of analysis reported in the Appendix which focuses on macro level indicators on the changing labour market in Wales and draws from existing data.

This section reviews the most relevant data sources currently available to Welsh Government, the features of fair work they cover, their current capacity to track and profile fair work in Wales, and their enhancement potential.

National indicators of fair work

The importance of this exercise is underlined by the fact that the indicators and data sources on which Welsh Government rely pre-date the setting up of the Fair Work Commission and its definition of fair work as outlined in this Report (Part 2). Reference to ‘decent work’ in the *Well-being of Future Generations (Wales) Act 2015*, for example, pre-dates the former First Minister’s commitment to make Wales a fair work nation as do the national indicators which accompanied the Act. Currently, there are three national indicators of relevance to the Fair Work Commission’s definition of fair work: pay levels below two-thirds of the median UK wage; the gender pay gap; and levels of job satisfaction. These are reported on annually⁵.

The lack of synchronisation between the policy interest in fair work and the setting of national targets is well recognised⁶. In the light of this, the national indicators need to be amended in line with the Fair Work Commission’s definition of fair work and integrated into the seven well-being goals. In particular, the following amendments are proposed:

- The two-thirds of the median UK wage indicator is replaced with one focused on the proportion of workers in Wales paid at or above the Welsh Living Wage.
- The job satisfaction indicator is removed.
- Trade union recognition for collective bargaining is included as a national indicator.

Furthermore, the Welsh Living Wage and collective bargaining indicators should be adopted as national milestones given their centrality to the definition of fair work and their ability to make a big difference to national well-being. We also support the Welsh Government’s proposal to make gender pay gap monitoring a national milestone and welcome the feasibility work on extending the milestone to disability and ethnicity pay differences⁷. However, we would add that monitoring needs to be consistently applied across the UK as recommended by the EHRC.

Consideration should also be given to making training and development, work intensity, job control, individual voice and work-life balance national indicators of fair work using tried and tested survey indicators such as those used by the OECD and others⁸. At minimum, these are characteristics on which data need to be collected given their importance to the promotion of worker well-being. This will require detailed expert discussion such as advice gathered

from the Welsh Government's consultation on the national indicators/milestones⁹ as well as that provided by the Fair Work Wales Observatory.

Existing Surveys

The extent to which current data sources meet the challenge of being able to track the contours of fair work is summarised in Table B1 (at the end of this Annex). It presents a scorecard of individual level and employer level surveys and their potentiality to track fair work in Wales against the six characteristics identified in the Fair Work Commission's definition. The cross-cutting theme of equality is explored only in terms of the ability to disaggregate the data by protected characteristics.

The first issue this exercise highlights is that there is a patchwork of data sources, but no single go-to source which covers all six characteristics of fair work. That said, thorough and robust data are available on some aspects from existing sources. Pay data, for example, are readily available. These are taken from employers who pay wages and salaries as well as from workers who receive them. The former includes the Annual Survey of Hours and Earnings (ASHE), and the latter includes the Labour Force Survey (LFS) and the Annual Population Survey (APS). ASHE and APS have large Welsh sample sizes (over 30,000 responses) which allow robust reporting of disaggregated analysis and their publication on www.statswales.gov.wales. More substantively, these data have been used to highlight where encouraging or enforcing the Welsh Living Wage is likely to have greatest impact (cf. Appendix Figure A5). The regional patterning of gender pay inequalities across Wales is also revealed using these data (cf. Appendix Figure A7).

The second issue to note is that data on the non-pay characteristics of jobs, which also have a proven link to well-being, are largely, but not entirely, absent from official surveys such as ASHE, LFS and the APS as well as administrative data such as those held by Her Majesty's Revenue and Customs (HMRC). But even when they are included, the data produced may not be sufficiently robust for disaggregation. For example, not all of the questions in the LFS are asked in every quarter. These questions are not, then, included in the much larger APS which piggybacks onto and boosts data taken from four sequential LFSs. These include survey questions on trade union membership, coverage and recognition as well as exposure to work-related injury and illness. Both are features of fair work, but small sample sizes for Wales make disaggregation of the results problematic for sectors, regions and protected characteristics.

Currently, other characteristics of relevance to fair work are not covered at all in official surveys of individuals. These include the intensity of work, the level of autonomy exercised in carrying out tasks, the amount of say workers have in decision-making, development and promotion opportunities, and the probability of job loss. For these insights, we have to wait for less periodically carried out surveys such as the Workplace Employment Relations Survey (WERS), the European Working Conditions Survey (EWCS), the recently launched UK Working Lives Survey (UKWLS), and the Skills and Employment Survey (SES)¹⁰. A further drawback of these data sources, in addition to their irregularity, is that the samples for Wales

– even when boosted – are relatively small¹¹. This prevents disaggregated analysis by region and/or protected characteristics. In addition, the UK’s withdrawal from the EU makes the UK’s future participation in European Union-supported surveys such as EWCS uncertain (see Table B2 at the end of this Annex).

The paucity of data was well recognised in *Good Work: The Taylor Review of Modern Working Practices* with a specific recommendation that ‘more effort has to be placed on measuring quality of work through agreed metrics and better data’¹². Following this recommendation, a UK level review group was set-up to scope out what was needed. A total of 18 indicators of job quality were agreed. The group recommended adding 12 new survey questions to the Labour Force Survey (LFS), a household survey carried out across the UK every quarter. However, it said little about the collection of employer level data, stating that the ‘vehicle for capturing [job quality] data must be through a national survey of workers’¹³.

Crucially for the Welsh Government, it also recommended that the ‘UK Government should engage with the devolved UK jurisdictions to consult on the implementation of the national job quality measurement framework and its interaction with devolved strategies and action concerning good work’¹⁴. If implemented, these enhancements will provide useful data for tracking fair work in Wales. That said, the LFS delivers relatively small sample sizes for Wales. These will not allow robust disaggregation by local authority and/or by protected characteristics, thereby making it impossible to identify areas of the Welsh economy where trade union membership, coverage and recognition are low or where other characteristics of fair work need to be raised. In addition, some of the suggested new questions tap into subjective assessments with reference to personal preferences for additional or reduced working hours and control over how the job is done. Also some aspects of fair work do not feature at all in the proposed new questions – work intensity, for example, is not covered, yet evidence and theory shows that work-related stress is at its peak when required effort is high and job control is low¹⁵. Furthermore, evidence suggests that Wales has become a high job stress nation which reduces well-being and threatens its status as a fair work nation (see Appendix).

The offer of engagement and consultation on future data collection exercises in this area needs to be pursued, so that the six characteristics of fair work feature more strongly in UK-wide data collection exercises and that preference is given to the APS since it gives more scope for disaggregated Welsh reporting. The Office for National Statistics (ONS) could also be encouraged to recognise the fair work data requirements of the devolved administrations.

Thirdly, data on employers’ policies and practices are even scarcer. Most effort has been directed at tracking employers’ training expenditure and the pattern of skills shortages through surveys such as the Employer Skills Survey (ESS) and the Employer Perspectives Survey (EPS). While these sources do provide some useful data for Wales on progression and access to training, they have a limited focus¹⁶.

Surveys which focus on the way in which employers manage labour and organise work, and which have a wide scope, are rare. The best example we have of such a survey is the

Workplace Employment Relations Survey (WERS) which was last carried out in 2011 and forms part of a series of six surveys stretching back to 1980. It is internationally renowned with replication in other countries such as Australia and Canada¹⁷. It collects data from both the employer and a randomly selected sample of employees (as well as from interviews with employee representatives where present).¹⁸ This allows the employee's experiences of work to be set in the context of their employer's policies and practices, and for connections to be drawn between the two. For example, research based on this unique dataset shows that employers' use of competency-based recruitment, performance appraisal and individual performance related pay enables disabled people to be selected, assessed and rewarded on the basis of their individual abilities and not on stereotypes¹⁹.

Despite the analytical benefits of WERS, it seems there are currently no plans to re-run WERS in Britain in its current form. Instead, a telephone survey of 2,500 employers is being carried out by BEIS and will report in summer 2019. The Management and Well-being Practices Survey (MWPS) – as it is called – covers some of the issues covered by WERS, but uses a non-comparable method of data collection.

Even if WERS were to be repeated in the future and in the same fashion as in 2011, the sample sizes of workplaces and employees in Wales would be small. In 2011, around 150 workplaces took part with data collected from around 1,150 employees. In these circumstances, one possibility would be to carry out a WERS-type study in Wales only. However, WERS is a relatively expensive and irregularly conducted exercise. The last WERS cost £2 million in fieldwork costs alone and was funded by the (then) Department for Business and Innovation, the Advisory, Conciliation and Arbitration Service (Acas), the Economic and Social Research Council (ESRC) and the UK Commission for Employment and Skills (UKCES).

Similar employer surveys are carried out across Europe and would, in principle, allow for international comparisons were the sample size for Wales to be boosted. The most relevant survey here is the European Company Survey (ECS) which has been carried out on three occasions, with the next survey due in 2019. This survey collects useful data on employee voice and collective representation at the level of the establishment. However, its frequency does not lend itself to provide the basis for regular monitoring, its UK sample size is relatively modest, and its structure and organisation does not allow for the insertion of country-specific questions designed to address gaps in the evidence base. The UK's withdrawal from the EU also makes the UK's participation in EU-wide surveys of this type uncertain.

One noticeable gap is evidence on employers who have policies, practices and procedures which give substantive effect to their legal obligations (cf. Table B1). The best way of gathering this type of evidence – across a representative sample of employers – is to ask employers a number of appropriately worded questions in a survey. The 2011 WERS, for example, does just that by asking employers what policies and practices they have to ensure fair treatment at work and whether they have special procedures for encouraging applications from groups with protected characteristics. Furthermore, it asks whether employers go

beyond meeting statutory requirements for flexible working and the payment of maternity and paternity leave. These types of questions could be extended to action plans on pay inequality, modern slavery and actively promoting trade union membership as well as testing employers' awareness of their legal obligations (the MWPS, for example, includes questions on legal requirements and adherence to government policy). To collect systematic and robust data of this type of Wales, a survey focused on employers' policies, practices and actions is required.

However, there are no suitable employer level surveys on which to piggy-back either by adding sample points and/or adding questions. Another WERS is not planned, the ESS is currently being merged with the EPS and will be carried out every other year (but only on a large basis every four years, beginning in 2019), and the UK's participation in the ECS is uncertain given the UK's withdrawal from the EU.

The only viable option is to design and commission a new employer survey of fair work in Wales. A Fair Work Wales Survey (FWWS) would need to be carried out biennially in order to provide regular tracking, and require a baseline. A biennial survey could be carried out by telephone and would therefore be relatively quick and cheap to deliver. As an indicator of the scale of investment, the MWPS cost BEIS £240,000 for 2,500 telephone 30-minute interviews with employers across Britain.²⁰ The existence of a periodic Welsh Government run employer survey would open up the possibility of including other topical questions where the views of employers, such as preparedness for changes to trading relationships with the EU, would be useful for policy makers.

At the individual level, too, there is a shortage of suitable data needed to track fair work as defined by the Commission. There are a number of possible solutions. One possibility is to boost the Welsh sample sizes of existing individual level surveys such as the UKWLS, EWCS and SES and/or employer surveys such as the ECS. However, while boosts to these surveys may be possible, it is unlikely that survey 'owners' will be willing to redesign the instruments they use to accommodate the interests of Welsh Government. Furthermore, apart from UKWLS – which is intended to be annual – these surveys are irregularly carried out. Nevertheless, given the value of data which places fair work in Wales in a comparative perspective it is important that Welsh Government boosts surveys such as SES and EWCS if the opportunity arises.

Another possibility is to insert batteries of questions focused on the six characteristics of fair work to existing surveys. The National Survey for Wales (NSW) is the most obvious target since it is the Welsh Government's chosen vehicle to 'measure progress against government targets and indicators'²¹. KAS successfully argued for the insertion of a series of internally-generated fair work questions into the NSW 2019-2020. However, these questions were devised, tested and piloted before the Fair Work Commission was set-up. Nevertheless, the case for a fair work module has already been successfully made. That said, future question modules need to reflect the Fair Work Commission's definition of fair work, use tried and tested questions, and be concise²². It also needs to avoid duplication with any new LFS

questions which may be added following recent recommendations made by the Carnegie Trust and the deliberations of the Industrial Strategy Council²³.

To prevent the NSW being overloaded, the NSW fair work module might be run in the years in the FWWS ‘fallow’ years, so that new data on fair work in Wales becomes available every year – from workers one year and from employers the next. Since some fair work questions are included in the NSW 2019-2020, FWWS could be carried out in 2020²⁴ and the pattern repeated on a two-year cycle.²⁵ Data at the individual level will need to be reasonably large in order to allow for disaggregated reporting by protected characteristic – a suggestion made in submissions to the Commission, including those from the EHRC and Chwarae Teg. It is proposed that fair work data are collected every other year in the NSW.

The Office for Fair Work could use these initiatives to invite other devolved administrations and BEIS to use the instruments adopted and/or boost the employer survey for their geographies, thereby substantiating Wales’s position as a leader the field, both in terms of promoting fair work and tracking progress towards Wales becoming a fair work nation.

Outside expertise and advice needs to be drawn upon more systematically. This would include commissioning experts to advise on how existing data sources might be used to plug the evidence gap; advise on the design of the new surveys and/or question batteries; and analyse the data.

Other Data Sources

The collection of data extends beyond carrying out periodic surveys. There is an increasing abundance of administrative data – that is, data collected in the course of executing other obligations such as the payment of taxes by employees, the demonstration of commitments by employers and/or the compliance with regulations. HMRC data on pay also provides a rich data source which is increasingly becoming available for researchers to analyse subject to a range of ethical safeguards, including the use of a ‘safe’ environment such as the one provided by the ESRC’s Secure Data Service (SDS). However, Welsh Government needs to secure greater access to these data in order to extract maximum benefit from existing data such as identifying low paying sectors, regions and/or types of employer where concerted intervention would have greatest effect.

There are other sources of administrative data which the Office for Fair Work will be collecting systematically as part of its work. These include: the number of employers accredited as Welsh Living Wage employers, the number of signatories to ethical charters (such as the Welsh Government’s *Code of Practice: Ethical Employment in Supply Chains*), trade union membership levels as reported by individual unions, the number of new trade union recognition agreements, the number of works councils established under the Information and Consultation Regulations, and data acquired through liaison with other bodies such as Acas, the EHRC and the Living Wage Foundation.

Endnotes

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⁴ OECD (2017) *OECD Guidelines on Measuring the Quality of the Working Environment*, Paris: Organisation for Economic Co-operation and Development, p14

⁵ Welsh Government (2018) *Well-being of Wales, 2017-18*, Cardiff: Welsh Government

⁶ Welsh Government (2019) 'How do we assist Welsh Ministers in measuring a nation's progress?', *Welsh Government Consultation Document Number WG36970*, Cardiff: Welsh Government, p14

⁷ *Ibid.* p5

⁸ e.g., OECD (2017) *OECD Guidelines on Measuring the Quality of the Working Environment*, Paris: Organisation for Economic Co-operation and Development: Annex 6.A; Felstead, A, Gallie, D, Green, F and Henseke, G (2019) 'Conceiving, designing and trailing a short form measure of job quality: a proof-of-concept study', *Industrial Relations Journal*, 50(1): 2-19.

⁹ Welsh Government (2019) 'How do we assist Welsh Ministers in measuring a nation's progress?', *Welsh Government Consultation Document Number WG36970*, Cardiff: Welsh Government.

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- ¹¹ Felstead, A. and Davies, R. (2019) ‘Work in Wales, 2006-2017: evidence from the Skills and Employment Survey’, *Social Science Number 17/2019*, Cardiff: Welsh Government
- ¹² Taylor, M., March, G., Nicol, D. and Broadbent, P. (2017), *Good Work: The Taylor Review of Modern Working Practices* London: Department for Business, Energy and Industrial Strategy, p102
- ¹³ Carnegie UK Trust (2018) *Measuring Good Work: The Final Report of the Measuring Job Quality Working Group*, Dunfermline: Carnegie Trust, p29
- ¹⁴ *Ibid.* p19
- ¹⁵ Karasek, R. A. (1979) ‘Job demands, job decision latitude, and mental strain: implications for job redesign’, *Administrative Science Quarterly*, 24: 285-308
- ¹⁶ Department for Education (2018) *Employer Skills Survey 2017: Wales Data Tables*, London: Department for Education cf. Appendix A
- ¹⁷ Morehead, A., Steele, M., Alexander, M., Stephen, K. and Duffin, L. (1997) *Changes at Work: The 1995 Australian Workplace Industrial Relations Survey – A Summary of the Major Findings*, Canberra: Department of Workplace Relations and Small Business
- ¹⁸ Another approach is to survey employing establishments and then to link these data to administrative data held on establishments and the individuals they employ (as in the German Linked-Employer-Employee-Data of the IAB (LIAB)) (https://fdz.iab.de/en/Integrated_Establishment_and_Individual_Data/LIAB.aspx). However, while linking in establishment level data is possible in the UK, at present adding in individual data is not. This is due to data protection issues.
- ¹⁹ Hoque, K., Wass, V., Bacon, N. and Jones, M. (2018) ‘Are high-performance work practices (HPWPs) enabling or disabling? Exploring the relationship between selected HPWPs and work-related disability disadvantage’, *Human Resource Management*, 57(2): 499-513
- ²⁰ <http://bidstats.uk/tenders/2018/W30/683606186>
- ²¹ Welsh Government (2014) *Chief Statistician’s Update, Issue 3*, Cardiff: Welsh Government, p1
- ²² Felstead, A., Gallie, D., Green, F. and Henseke, G. (2019) ‘Conceiving, designing and trailing a short form measure of job quality: a proof-of-concept study’, *Industrial Relations Journal*, 50(1): 2-19.
- ²³ Carnegie UK Trust (2018) *Measuring Good Work: The Final Report of the Measuring Job Quality Working Group*, Dunfermline: Carnegie Trust; BEIS (2018) *Good Work Plan* London: Department for Business, Energy and Industrial Strategy, p58
- ²⁴ We recognise that for budgeting purposes this may not be ideal, but carrying out a survey every year would be a poor use of resources since year-to-year changes are likely to be small (e.g. Felstead et al., 2016).
- ²⁵ The FWWS ‘fallow’ years are also years in which the revamped ESS is expected to be carried out – large scale in 2019, small scale in 2021 and so on. This is a survey in which Welsh Government has been asked to take part by contributing financially to the Welsh fieldwork.

Table B1:

Six Characteristics of Fair Work Covered by Data Sources – A Summary

Survey	Fair Work Characteristic					
	Fair Reward	Employee Voice and collective representation	Security and Flexibility	Opportunity for Access, Growth and Progression	Safe, Healthy and Inclusive Working Environment	Legal Rights Given Substantive Effect
<i>Individual Level Surveys</i>						
Labour Force Survey (LFS)	√√	√√	√	√√√	√	X
Annual Population Survey (APS)	√√√	X	X	√√√	X	X
Skills and Employment Survey (SES)	√	√√√	√√	√√√	√	X
European Working Conditions Survey (EWCS)	√	√√	√√	√	√√√	X
UK Working Lives Survey (UKWLS)	√	√	√√	√	√√	X
National Survey for Wales (NSW)	X	X	X	X	X	X
<i>Employer Level Surveys</i>						
Annual Survey of Hours and Earnings (AHSE)	√√√	√	X	X	X	X
Workplace Employment Relations Survey (WERS)	√	√√√	√√	√	√√	√
European Company Survey (ECS)	X	√√√	√	√	√	X
Employer Skills Survey (ESS)	X	√	X	√√√	X	X
Employer Perspectives Survey (EPS)	X	X	X	X	X	X

√√√ = very good coverage; √√ = good coverage; √ = reasonable coverage; X = no coverage.

Table B2:

Individual Level Surveys: Examining Current Capacity and Future Potential

Survey	Nature, Frequency and Sample Size	Current Capacity to Track and Profile Progress in Wales	Fair Work Characteristics Covered	Enhancement Potential
Labour Force Survey (LFS)	The LFS is a quarterly sample survey of households living at private addresses in the UK. Around 40,000 households are contacted and information is collected on around 90,000 people, of whom around 45,000 are aged 16 and over and in employment.	Each quarterly survey comprises 2,000 Welsh-domiciled respondents who are aged 16 and over and are in employment. This allows for some disaggregation, but where similar data are collected, preference is given to the APS and ASHE on grounds of their larger sample sizes (see below). If headline findings are low disaggregation may not be advisable.	<ul style="list-style-type: none"> • <i>Fair reward.</i> Wage data are collected but only in waves one and five (respondents are re-interviewed five times over the course of 15 months). This reduces the Welsh quarterly sample size to around 800. • <i>Employee voice and collective representation.</i> Every fourth quarter, questions are asked about trade union membership, union presence at the workplace and whether their pay is directly affected by collective bargaining arrangements. • <i>Security and flexibility.</i> Some data are collect such as employment on contracts which do not guarantee a minimum number of hours (known as Zero Hours Contracts, ZHCs) and jobs which entail variable hours. However, data on ZHCs are collected in the second and fourth quarter LFS (Petkova, 2018). • <i>Opportunity for access, growth and progression.</i> In every quarter, the LFS asks questions about training undertaken in the four weeks/13 weeks before interview as well as its length, the location and mode of 	<ul style="list-style-type: none"> • Recommendations have been made to the UK Government to include additional questions on job security, career progression and individual voice, thereby increasing the usefulness of this data source (Carnegie, 2018). • From the quarterly surveys an annual survey can be created. This would boost the Welsh sample to around 3,200 a year, thereby increasing the robustness of the data and possibly allowing more disaggregation of existing, and any new, data collected. • However, not all questions are asked every quarter with sample sizes reduced as a consequence.

			<p>delivery, the financial costs involved and whether the skills acquired are certified.</p> <ul style="list-style-type: none"> • <i>Safe, inclusive and healthy working environment.</i> Questions commissioned by Health and Safety Executive (HSE) are included in the first quarter LFS. These cover workplace injury and work-related illness and are used to produce annual statistics (HSE, 2018). • <i>Legal rights given substantive effect</i> – not covered. • <i>Equality as cross-cutting theme.</i> Disaggregation possible, but dependent on characteristic. 	
Annual Population Survey (APS)	The APS is a combined survey of households in the UK. Its purpose is to provide information on key social and socio-economic variables between annual surveys, with particular emphasis on providing information relating to small geographical areas. The APS comprises the LFS plus data from the Annual Local (Area) Labour Force Survey (LLFS) boosts for England, Scotland and Wales.	The APS has a UK sample size of around 290,000, of which 32,000 are respondents living in Wales and of those around 13,500 are in paid work. This allows for regional disaggregation, gender and age breakdowns as well as disability analysis (Jones <i>et al.</i> , 2018 and 2012).	<ul style="list-style-type: none"> • <i>Fair reward.</i> Covered as per the LFS. • <i>Employee voice and collective representation</i> – not covered. • <i>Security and flexibility</i> – not covered. • <i>Opportunity for access, growth and progression.</i> Covered as per the LFS • <i>Safe, inclusive and healthy working environment</i> – not covered. • <i>Legal rights given substantive effect</i> – not covered. • <i>Equality as cross-cutting theme.</i> Disaggregation possible given sample size. 	<ul style="list-style-type: none"> • Ideally, this is the UK level data source that needs to carry more fair work questions such as those in the LFS as well as newly proposed questions. Its larger sample size allows more robust disaggregation for Wales. • However, data collection is limited to pay and training with the other aspects of fair work not currently covered. • As a rule, themes not covered in all four quarters of the LFS are not included in the APS.

<p>Skills and Employment Survey (SES)</p>	<p>The SES is a series of surveys of workers aged 20-65 years old working in Britain. The 2017 survey was the seventh in the series with sample sizes varying according to the level of funding secured. In 2017, 3,306 respondents took part (Felstead <i>et al.</i>, 2015, 2019).</p>	<p>In 2017, the survey was boosted by Welsh Government funding and so 455 workers in Wales took part in the survey. The surveys in 2006 and 2012 were also boosted giving a total of 1,449 Welsh domiciled workers across three waves of the survey (Felstead and Davies, 2019).</p>	<ul style="list-style-type: none"> • <i>Fair reward.</i> These data are collected from around 80% of the sample. • <i>Employee voice and collective representation.</i> Data are collected on individual voice exercised when carrying out job tasks, and levels of consultation and involvement at work. Data also collected on trade union membership, the presence of trade unions in the workplace and their influence over work organisation. • <i>Security and flexibility.</i> Exposure to insecurity is assessed through questions on the likelihood of job loss, the difficulties of securing an equivalent job and the threat of a pay cut or an enforced move to another job. It also captures discretion levels employees have over setting the length of the working day and its scheduling. • <i>Opportunity for access, growth and progression.</i> The survey covers training and learning in depth as well as line management support. • <i>Safe, inclusive and healthy working environment.</i> The survey carries questions on work intensity – the degree to which hard work is required, the extent to which voluntary effort is expended, the tension under which work is carried out, the speed of work and the pressure of deadlines. • <i>Legal rights given substantive effect</i> – not covered. • <i>Equality as cross-cutting theme.</i> Some disaggregation possible. 	<ul style="list-style-type: none"> • While conducted every five years or so, funding for the survey is not guaranteed. • Even with a boost the Welsh sample is still relatively small making it difficult to report on those with protected characteristics and/or those living in particular parts of Wales. • An alternative would be to carry out a special and shorter survey for Wales using tried and tested questions from SES, EWCS and other surveys. A telephone (and therefore cheaper) survey might be considered for this purpose.
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<p>European Working Conditions Survey (EWCS)</p>	<p>In 2015, the EWCS was carried out across the EU28 as well as in Norway, Switzerland, Albania, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey. Around 1,600 interviews were carried out in the UK. It began in 1990 and has been carried out every five years since then (Eurofound, 2017).</p>	<p>Only 90 interviews were carried out in Wales in 2015. So robust evidence from this source is not available.</p>	<ul style="list-style-type: none"> • <i>Fair reward.</i> These data are collected from around 75% of the entire sample with 80% of the UK sample providing such data. • <i>Employee voice and collective representation.</i> A series of questions are asked about employee involvement and relations with management. • <i>Security and flexibility.</i> EWCS has pioneered questions about the degree to which employees or employers determine work schedules. • <i>Opportunity for access, growth and progression.</i> Questions are asked on the incidence of training and its outcomes. • <i>Safe, inclusive and healthy working environment.</i> Data are collected on the length of time exposed to nine physical hazards (e.g., vibrations, low/high temperatures, handling chemicals and breathing in smoke/fumes) and five posture-related hazards (e.g., lifting, repetitive movements and working in a tiring or painful position). • <i>Legal rights given substantive effect</i> – not covered. • <i>Equality as cross-cutting theme.</i> Disaggregation not possible given sample size. 	<ul style="list-style-type: none"> • While the EWCS provides little opportunity to track fair work in Wales given its small sample size, it carries many tried and tested survey questions which may be adopted for use in future data collection exercises in Wales. This would also have the added benefit of allowing some international comparisons to be made. • However, the UK’s withdrawal from the EU makes the UK’s participation in this and other EU surveys uncertain. • Non-EU countries are involved in the survey, but payment is required.
<p>UK Working Lives Survey (UKWLS)</p>	<p>The UKWLS was first carried out in 2017/2018 using an online quota sample of 6,009 adults of working age. It is an annual survey carried out by</p>	<p>The Welsh sample size cannot be discerned from the published reports and the sample is not based on probability principles of data collection</p>	<ul style="list-style-type: none"> • <i>Fair reward.</i> Data collected on pay and whether respondent makes a contribution to a workplace pension scheme and if so, how much contribution the employer makes. 	<ul style="list-style-type: none"> • The UKWLS it has attracted a lot of attention given its exclusive focus on job quality and the commitment by CIPD to fund the survey every year.

	the CIPD (Gifford, 2018).	(Gifford and Sarkar, 2018).	<ul style="list-style-type: none"> • <i>Employee voice and collective representation</i>. Extent of individual and collective voice at work, and satisfaction the opportunities to exercise voice. • <i>Security and flexibility</i>. Job security, intention to leave and opportunity to work flexibly. • <i>Opportunity for access, growth and progression</i>. Perceived career prospects, frequency and helpfulness of others at work, and usefulness of training. • <i>Safe, inclusive and healthy working environment</i>. Questions on mental and physical health. • <i>Legal rights given substantive effect</i> – not covered. • <i>Equality as cross-cutting theme</i>. Disaggregation not possible given sample size. 	<ul style="list-style-type: none"> • Provided the survey questions address issues of relevance, a Welsh boost might be considered. However, this is a vehicle owned and managed by CIPD and so the insertion of questions tailored to Welsh Government priorities may be difficult.
National Survey for Wales (NSW)	The NSW is a face-to-face survey of over 11,000 randomly selected adults aged 16 and above living in Wales, around 5,200 of whom are in work. The survey is annual covers a wide range of issues affecting people and their local area (Smith <i>et al.</i> , 2014).	The NSW is a consolidation of several surveys commissioned by the Welsh Government. Some of the results used to measure progress towards the goals set out in the <i>Well-being of Future Generations Act 2015</i> (Hanson and Sullivan, 2014 and 2015; Aumeryr <i>et al.</i> , 2017; Helme and Brown, 2018).	<ul style="list-style-type: none"> • <i>Fair reward</i> – not covered. • <i>Employee voice and collective representation</i> – not covered. • <i>Security and flexibility</i> – not covered. • <i>Opportunity for development</i> – not covered. • <i>Safe and healthy working environment</i> – not covered. • <i>Legal rights given substantive effect</i> – not covered. • <i>Equality as cross-cutting theme</i>. Some disaggregation possible. 	<ul style="list-style-type: none"> • The NSW has a core-rotating module design which means that a fair work module based on tried and tested survey items could be added. • Questions on parental leave, working patterns, bullying at work and experience of discrimination are included in NSW 2019-2020, with 18 questions in a fair work module (Welsh Government, 2019b). • Inserting questions more directly focused on the Fair Work Commission’s definition

				<p>should be considered in future waves of the survey.</p> <ul style="list-style-type: none">• However, analysis would be restricted to the presentation of descriptive headline indicators with breakdowns limited to a set of pre-determined indicators (e.g. industry and occupation are not routinely categorised).
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Table B3:

Employer Level Surveys: Examining Current Capacity and Future Potential

Survey	Nature, Frequency and Sample Size	Current Capacity to Track and Profile Progress in Wales	Fair Work Characteristics Covered	Enhancement Potential
Annual Survey of Hours and Earnings (AHSE)	ASHE collects pay data from employers. It is a survey of data employers hold on a 1% sample of employee jobs. These jobs are drawn from HM Revenue and Customs Pay as You Earn (PAYE) records. It is regarded as the most detailed and comprehensive source of earnings information in the UK. It is carried out every April with results published in the Autumn of that year (Smith, 2017).	Each ASHE comprises around 140,000 returns. This makes local authority level analysis possible.	<ul style="list-style-type: none"> • <i>Fair reward</i>. Thorough coverage. ASHE is considered to be a more accurate source of information on earnings than the LFS/APS as the information comes from administrative data about employees rather than relying on respondent recall. • <i>Employee voice and collective representation</i>. Data are collected on whether the employee’s pay is set with reference to an agreement affecting more than one employee, such as pay collectively agreed with a trade union. • <i>Security and flexibility</i> – not covered. • <i>Opportunity for access, growth and progression</i> – not covered. • <i>Safe, inclusive and healthy working environment</i> – not covered. • <i>Legal rights given substantive effect</i> – not covered. • <i>Equality as cross-cutting theme</i>. Some disaggregation possible. 	<ul style="list-style-type: none"> • ASHE collects limited personal data. For example, disability, ethnicity and educational qualifications are not collected by ASHE. However, analysis by age and gender is possible. In fact, this data source is currently used to monitor the gender pay gap in Wales, one of the national indicators under the <i>Well-being of Future Generations (Wales) Act 2015</i> (Welsh Government, 2016). • It could also be used to analyse the impact of collective bargaining on pay which is a better source of such data than LFS which focuses on employees’ assessments of the direct impact of collective bargaining on pay (Davies, 2016). • However, scope for enhancement of this data source is limited.

<p>Workplace Employment Relations Survey (WERS)</p>	<p>The 2011 WERS consisted of interviews with a senior manager in each of the workplaces selected (2,680), an interview with a union or non-union employee representative (1,002), and a postal survey of a randomly selected group of employees (21,981). In addition, a randomly selected sub-sample of establishments which took part in the 2004 survey were re-interviewed (989) (van Wanrooy <i>et al.</i>, 2013: 8). WERS has been carried out six times since 1980.</p>	<p>In 2011, 147 Welsh workplaces and 1,142 Welsh employees working in these workplaces were included in the survey (Forth and ACAS, 2014: Table 2.1).</p>	<p>Employer level:</p> <ul style="list-style-type: none"> • <i>Fair reward.</i> Data on nature of payment systems, job evaluation, pay reviews, and involvement of employee representatives and others in pay determination. • <i>Employee voice and collective representation.</i> Extensive data collection on collective representation along with data on individual voice through workplace meetings, consultations, briefings and surveys. • <i>Security and flexibility.</i> Access to flexible working, job security guarantees, redundancy management and use of non-standard contracts. • <i>Opportunity for access, growth and progression.</i> Extent of employee training and subjects covered. • <i>Safe, inclusive and healthy working environment.</i> Workplace injuries, consultation on health and safety and risk management. Also policies and practices for those which protected characteristics covering recruitment, promotion and assessment of relative pay. • <i>Legal rights given substantive effect.</i> Data on policies and practices to ensure fair treatment at work as well as data on going beyond statutory requirements for flexible working and maternity and paternity pay. • <i>Equality as cross-cutting theme.</i> Disaggregation by protected characteristic not relevant. <p>Employee level:</p>	<ul style="list-style-type: none"> • WERS was last carried out in 2011 with no plans for it to be repeated. A telephone and more limited survey focused on flexible working and employee consultation is taking its place, but with no data collected from employees at present. This new survey – known as the Management and Well-being Practices Survey (MWPS) – does include questions on legal requirements and adherence to government policy.
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			<ul style="list-style-type: none"> • <i>Fair reward</i>. Banded data collected on pay. • <i>Employee voice and collective representation</i>. Data collected on various voice mechanisms over a range of issues, the effectiveness of consultation, trade union membership and assessment of the impact of collective representation on the working environment. • <i>Security and flexibility</i>. Access to flexible working. • <i>Opportunity for access, growth and progression</i>. Estimates of training activity and the matching of skills to the job. • <i>Safe, inclusive and healthy working environment</i> – not covered. • <i>Legal rights given substantive effect</i> – not covered. • <i>Equality as cross-cutting theme</i>. Some disaggregation possible. 	
European Company Survey (ECS)	The ECS has been carried out every four to six years since its inception in 2004-2005 as the European Establishment Survey on Working Time and Work-Life Balance. The second survey (carried out under the new title European Company Survey) was completed in 2009 and the third survey was in 2013. The next ECS will be carried out in	In 2013, 1,653 workplaces and 218 employee representatives in the UK were interviewed. However, the size of the Welsh sample not discernible from published sources.	<ul style="list-style-type: none"> • <i>Fair reward</i>. Data on use of variable pay. • <i>Employee voice and collective representation</i>. Data on workplace and company level collective bargaining and management’s views of their efficacy. Also data on individual employee involvement in day-to-day decision making and changes to working arrangements. • <i>Security and flexibility</i>. Data on working time arrangements. • <i>Opportunity for access, growth and progression</i>. Data on training, appraisal and recruitment strategy. • <i>Safe, inclusive and healthy working environment</i> – not covered. 	<ul style="list-style-type: none"> • The ECS is carried out every four to six years. • Raw data are not downloadable from the Data Archive but tables can be derived using an online query tool. • However, the UK’s withdrawal from the EU makes the UK’s participation in this and other EU surveys uncertain. • Non-EU countries are involved in the survey, but payment is required.

	2019 (Eurofound, 2015).		<ul style="list-style-type: none"> • <i>Legal rights given substantive effect</i> – not covered. • <i>Equality as cross-cutting theme</i>. Disaggregation by protected characteristic not relevant. 	
Employer Skills Survey (ESS)	The ESS focuses on employer demand for skills, skills shortages and training within firms. In its current form it has been carried out biennially since 2011, but as an English survey it dates back to 2001. Around 88,000 telephone interviews were carried out for the 2017 survey (Winterbotham <i>et al.</i> , 2018).	ESS comprised around 6,000 Welsh interviews in 2017.	<ul style="list-style-type: none"> • <i>Fair reward</i> – not covered. • <i>Employee voice and collective representation</i>. The ESS series provides a measure of how businesses operate and organise their work in order to identify an approach that aims to stimulate more effective employee involvement and commitment in order to achieve high levels of performance. • <i>Security and flexibility</i> – not covered. • <i>Opportunity for access, growth and progression</i>. It focuses on employer demand for skills, skills shortages and training within firms. • <i>Safe, inclusive and healthy working environment</i> – not covered. • <i>Legal rights given substantive effect</i> – not covered. • <i>Equality as cross-cutting theme</i>. Disaggregation by protected characteristic not relevant. 	<ul style="list-style-type: none"> • Welsh Government sits on the steering committee. • Explore the possibility of paying to extend the Welsh employer interviews with the addition of fair work employer questions. • However, this is a vehicle owned and managed by the Department for Education with a specific purpose and so the insertion of questions tailored to Welsh Government priorities may be difficult. • The ESS and EPS (see below) are being merged. The new survey – still to be called the ESS – will be carried out every two years, with a large sample every four years and a smaller sample in the intervening years.
Employer Perspectives Survey (EPS)	The EPS is primarily outward-looking telephone survey of employers across the UK. It examines how to engage with training providers, schools,	The Welsh sample size in 2016 was around 2,000.	<ul style="list-style-type: none"> • <i>Fair reward</i> – not covered. • <i>Employee voice and collective representation</i> – not covered. • <i>Security and flexibility</i> – not covered. • <i>Opportunity for access, growth and progression</i> – not covered. 	<ul style="list-style-type: none"> • This biennial survey was not carried out in 2018 and it does not cover any of the fair work characteristics identified.

	<p>colleges and individuals to get the skills they need. Around 18,000 employers were interviewed across the UK in 2016 – it was not carried out in 2018 (Shury <i>et al.</i>, 2017).</p>		<ul style="list-style-type: none"> • <i>Safe, inclusive and healthy working environment</i> – not covered. • <i>Legal rights given substantive effect</i> – not covered. • <i>Equality as cross-cutting theme.</i> Disaggregation by protected characteristic not relevant. 	
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EVIDENCE BASE FOR THE COMMISSION

Evidence Base for the Commission

The Commission's work has been informed by evidence from a number of sources: responses to our Call for Evidence; consultation and engagement meetings; existing research and analysis; expertise from within the Commission and briefings from its Independent Expert Advisor. Details are provided below.

1. Call for evidence

We issued a five week call for evidence on 12 October 2018 to address the key questions in our terms of reference. The timescale for the Commission precluded a consultation on developed proposals. Rather, we sought input at an early stage to inform our thinking on a range of questions derived from our Terms of Reference. The call and the questionnaire were posted on the Commission's web-site (<https://beta.gov.wales/fair-work-commission>).

The Call for Evidence was publicised as widely as possible: through relevant mailing lists; through social media and the press, and by sending invitations to submit evidence to a range of bodies and individuals. These included key stakeholders such as public and private sector employers and their representative bodies, trade unions and civil society organisations, as well as research centres and policy 'think tanks', together with identified experts.

This resulted in a good response to the Call for Evidence (detailed below). As well as answering questions we had put to them, a number of those responding took up the invitation in the call to draw attention to reports or research publications which they considered of relevance to our work.

Our sincere appreciation goes to all the individuals and organisations which contributed to the call for evidence, whose comments, research and observations were significant in informing the Commission's deliberations and in shaping our recommendations.

Responses to the Call for Evidence

Organisations

Age Cymru

Bevan Foundation

Business in the Community (BITC) Cymru

Cardiff Council

Carnegie UK Trust

Cartrefi Cymru Co-operative

Confederation of British Industry (CBI) Wales

Chartered Institute of Building

Chwarae Teg

Chartered Institute of Personnel and Development (CIPD)

Citizens Advice

Engage to Change (E2C) project consortium

Equality and Human Rights Commission

Federation of Small Businesses (FSB) Wales

Institute of Chartered Accountants in England and Wales (ICAEW)

Institute of Employment Rights (IER)

Joseph Rowntree Foundation

Knox and Wells Ltd

Living Wage for Wales Leadership Team

Living Wage Foundation

Mudiad Meithrin

Office of the Future Generations Commissioner for Wales

Oxfam Cymru

Royal College of Nursing Wales

Social Care Wales

Stonewall Cymru

The Prince's Trust Cymru

Undeb Cenedlaethol Athrawon Cymru (UCAC)

Wales Centre for Public Policy

Wales Co-operative Centre

Wales TUC

Welsh Local Government Association

Welsh Refugee Council (in collaboration with Dr Mike Chick, TESOL, University of South Wales)

What Works Centre For Wellbeing

Work Foundation

Workplace Innovation Europe

Also one individual business in West Wales

Academics

Nick Bacon (Professor, University of London) and Kim Hoque (Professor, University of Warwick)

William Brown (Emeritus Professor, University of Cambridge)

Sarah Fraser Butlin; Dr Amy Ludlow; Catherine Barnard (Professor), (University of Cambridge)

Alan Felstead, (Professor, Cardiff University)

Duncan Gallie, CBE FBA, (Professor, Oxford University)
Melanie Jones (Professor) and Victoria Wass (Professor), (Cardiff University)
Ewart Keep, (Professor, Oxford University)
Patricia Leighton, (Emeritus Professor, University of South Wales)
Caroline Lloyd, (Professor, Cardiff University)
Deirdre McCann, (Professor, Durham University)
Ryszard Piotrowicz, (Professor, Aberystwyth University)
Keith Sisson, (Emeritus Professor, IRRU, University of Warwick)
Melanie Simms, (Professor, University of Glasgow)
Chris Warhurst, (Professor, Director of Institute for Employment Research, University of Warwick)
Keith Whitfield, (Professor, Cardiff University)
Dr Ying Zhou, (University of Surrey)

Evidence also submitted by:

Anonymous
Carl Downward
Sheila Jones
Nicola Lund

2. Consultation and engagement

Regular meetings were held with CBI Wales, FSB Wales and Welsh TUC who had been on the Fair Work Board which preceded the Commission. Their input was of great value to the Commission and they also facilitated wider contacts and engagement.

As well as meetings with the key social partners, other meetings took place with stakeholder groups, public and private employers, government agencies, Welsh Government Ministers and officials, campaign groups, independent experts and others (listed below). A list of meetings was posted on the website where an invitation was made for anyone wishing to meet with the Commission to contact us.

Meetings Held

Advisory Conciliation and Arbitration Service (Acas Wales and Acas National)

Bevan Foundation

Professor Phil Brown, Review of Digital Innovation for the Economy and the Future of Work in Wales

Business in the Community Cymru

Chwarae Teg

Commerce Cymru

Confederation of British Industry (CBI) Wales

Council for Economic Development

Director of Social Services Caerphilly County Borough Council and Chair of the National Commissioning Board

Equality and Human Rights Commission Wales

Fair Work Convention (Scotland) Co-Chair

Federation of Small Businesses Wales

The Future Generations Commissioner

Gangmasters and Labour Abuse Authority

Greater Manchester Combined Authority, Head of Strategy and Policy Development

Institute of Directors Wales

Living Wage in Wales Leadership Team - Member with responsibility for Procurement Strategy at Cardiff Council

NHS Wales Employers, Workforce and Organisational Development Directors

Scottish Government - Officials

Members of the WTUC General Council

The Welsh Language Commissioner

Welsh Local Government Association

Workforce Partnership Council, Head of Secretariat Unit

A number of meetings were held with Ministers, Officials and National Assembly for Wales Committee Chairs as follows:

Welsh Government Ministers – The Minister with lead responsibility for Fair Work; the then Finance Minister and the then Minister for Welsh Language and Lifelong Learning.

Economy, Infrastructure and Skills Committee Chair

Equality, Local Government and Communities Committee Chair

Health, Social Care and Sport Committee Chair

Welsh Government Officials covering the Code of Practice for Ethical Employment in Supply Chains; Social Services Workforce Policy; Knowledge and Analytical Services; Local Government Workforce Partnerships.

Other meetings

Group meetings were held with private sector businesses and with organisations in the public sector.

Members of the Commission met with some individual academic experts, including Professors and Senior Researchers at the University of Warwick, Cardiff University and the University of Leicester.

3. Research and analysis

The bibliography below lists many of the reports, articles and publications which informed the Commission's work. It is not exhaustive. Some internal and unpublished papers were also made available to us. Not all of the material referenced in endnotes to the Report, Appendix and Technical Annex is repeated here.

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4. Expertise from within the Commission

The Commission also drew on the expertise and experience of its members and of the Independent Expert Advisor indicated in these brief biographies.

Chair of the Commission

Professor Linda Dickens MBE, Emeritus Professor of Industrial Relations at the University of Warwick. A senior academic with an excellent national and international reputation in the field of employment relations, Linda's published research covers employment regulation, dispute settlement, equality and diversity, collective bargaining and areas of human resource management. She has a demonstrable track record in the practical application of her knowledge and expertise across the public and private sectors, including through a number of public appointments. Linda is an experienced labour disputes arbitrator, mediator and inquiry chair. Until recently she was a Deputy Chair of the Central Arbitration Committee and served on the Council of Acas. Her current appointments include non-Executive Board Member of the Gangmasters and Labour Abuse Authority.

Commissioners

Sharanne Basham-Pyke, Sharanne is Director of Shad Consultancy Ltd providing professional business advice and change management to the private, public and third sectors. She also is CEO of Talkflow a start-up software business and has a portfolio career as a Business Angel to a number of small businesses with a common theme – the desire to grow. Sharanne's background is the corporate world, joining BT in 1999 from a background in management consultancy.

Professor Edmund Heery, originally from Liverpool was educated at the universities of Cambridge and Essex and the London School of Economics. Since 1996 he has been Professor of Employment Relations at Cardiff Business School. Professor Heery is an expert on work and employment in the UK and has published research on trade unions, employers' organisations and the role of civil society in promoting fairness of work. His most recent research has examined the UK's voluntary Living Wage, including its adoption within Wales.

Sarah Veale CBE retired as Head of Equality and Employment Rights at the TUC in 2015. At the TUC Sarah was responsible for the organisation's work on equality and trade union and employment rights. Until January 2017 she was a Board member at the EHRC. She is a member of the Regulatory Policy Committee, which provides independent assessment of Government regulatory and de-regulatory proposals. Sarah is a non-Executive Director of the United Kingdom Accreditation Service. She is a visiting fellow at the Greenwich University Business School and a Vice Chair of the Equality and Diversity Forum. Sarah is a Vice President of the Chartered Institute of Environmental Health. In the past Sarah was a member of the Acas Council and the HSE Board.

Independent Expert Advisor

Professor Alan Felstead is Research Professor at the School of Social Sciences, Cardiff University. His research focuses on skills, training and various aspects of job quality. He has generated research income of £7.3 million and has produced over 200 publications. Based on research evidence he has given independent expert advice to government departments such as the Department for Business, Energy and Industrial Strategy and agencies such as the UK Commission for Employment and Skills, the Government Office for Science, and the Office for National Statistics.



Left to right: Professor Edmund Heery, Professor Linda Dickens MBE, Sharanne Basham-Pyke, Sarah Veale CBE, Professor Alan Felstead

