

Regulatory Impact Assessment (RIA)

A consultation stage Regulatory Impact Assessment has been completed in accordance the draft Code of Practice on Workforce Matters (the Code), including an initial cost benefit analysis.

There are no specific provisions in the Code which charge expenditure on the Welsh Consolidated Fund.

Background

1. There have been two Codes in place in Wales over the years; a Code issued under specific statutory authority for best value authorities (now improvement authorities) other than fire and rescue authorities and a Code issued under general statutory authority for the remainder of the public service. The Welsh Codes broadly replicated the equivalent Codes issued in England.
2. The aims of the Welsh Codes were to encourage the following where there was a transfer of public sector staff, particularly where this was done as part of an out-sourcing contract:
 - to apply the requirements of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) even where it does not apply in strict legal terms; and
 - to give greater protection to the employees whom the contractor takes on to work with the transferred staff. This is in two areas - first, their terms and conditions and, secondly, their pension provision.
3. This is the provision which has given the Codes the moniker of the "Two-Tier Codes".
4. The issuing of the Codes in England and Wales followed the Cabinet Office Statement of Practice on Staff Transfers (2000); this was directed at all public sector staff transfers but had no specific statutory basis. The UK Government and Welsh Government issued the first Codes in 2003. There were separate Codes for England and Wales, but both were issued under Section 19(4) of the Local Government Act 1999 and applied to best value authorities. These were the Codes issued under specific statutory authority (the 2003 Code).
5. In 2005 the UK Government and the Welsh Government issued two further Codes (one each for England the Wales) which dealt with public sector service contracts other than those emanating from local authorities. The Welsh Code was reissued in 2008 (the 2005 Code).
6. In late 2010 the UK Government announced that the English Code dating from 2003 was to be withdrawn. This was followed in March 2011 by the

withdrawal of the English 2005 Code. The UK Government has published a set of “Principles of Good Employment Practice”. These are voluntary principles and are less rigorous than the Codes and should not be considered as a substitute for them.

7. The withdrawal of the English Codes has not affected the standing of the Welsh Codes, which remain in place and should be respected.

Options

8. This Impact Assessment presents three different options in relation to the policy objectives of the Code. Each of the options is examined in terms of how far they would achieve the Government’s objectives, along with the risks. The costs and benefits of each option are set out in Chapter 8.
9. These options are:
 - Option 1 – Do nothing;
 - Option 2 – Reissue the 2003 Code with specific statutory authority and the 2005 Code with general statutory authority to the public service organisations covered respectively;
 - Option 3 – Amalgamate the 2003 Code and the 2005 Code and issue across the Welsh public service under a range of items of statute, providing both general and specific statutory authority;
 - Option 4 – Bring forward an Assembly Bill providing new powers for the Welsh Ministers to issue the Code under specific statutory authority across the Welsh public service.

Option 1 – Do Nothing

10. This option would require no action on the part of the Welsh Government. Both the 2003 Code issued under specific statutory authority and the 2005 Code issued under general statutory authority would remain in force as currently drafted, with the onus on the relevant Welsh public service organisations to implement and monitor their provisions. This represents the retention of the status quo.
11. Effectively this would mean that Local Authorities, community councils and National Parks Authorities in Wales would remain subject to a Code issued under specific statutory authority while parts of the Welsh public service (for example health and education bodies) would only be covered by a Code issued under general statutory authority. While still required to take its provisions into account, it could be argued that the requirements in respect of the 2005 Code are less onerous as there are no sector specific statutory provisions in respect of it.
12. There are some specific issues with this approach. Following the UK Government’s decision to remove the equivalent English Codes, there have been a series of assertions as to the standing of the Welsh Codes. Some parts of the Welsh public service have previously stated that the

Welsh Codes are no longer in force.

13. While this misunderstanding appears to have been addressed, it has also become clear that application of the Codes is not being undertaken equally. In relation to the 2003 Code, which is primarily focussed on Local Authorities in Wales, it has become clear that its requirements are not always included in outsourcing contracts and that monitoring of contracts where its provisions are included is patchy. Furthermore there is a difference in interpretation between the Welsh Government and Local Authorities as to what instances of outsourcing are covered by the Code.
14. For the sake of clarity it should be stated that it is the view of the Welsh Government that the Code applies in all instances where there is an outsourcing of service provision accompanied by a transfer of staff under TUPE. This is the case whether the outsourcing is to another organisation within the public sector, or an organisation outside of the public sector. This is not the interpretation taken by all parties subject to the 2003 Code.
15. Turning to the 2005 Code, queries have been raised as to the extent of its coverage. The 2005 Code (reissued in 2008) does not state within it which specific public service organisations it covers. However, unlike its English equivalent, it does not contain any specific exemptions either. It is the view of the Welsh Government that the 2005 Code applies across all parts of the public service not covered by the 2003 Code.
16. This is not the view that has been taken within the Welsh public service, with many organisations taking the view that if their English equivalents were excluded from the English Code then they were excluded from the Welsh Code. Clarity on this position would not be obtained by retaining the Codes in their current format.
17. It has also become apparent since the removal of the English Codes and the issuing of statements regarding the standing of the Welsh Codes, that there is limited awareness of the requirements of the Codes amongst the wider Welsh public service. This lack of awareness would not be addressed by retaining the Codes in their current format.

Option 2 – Reissue the 2003 Code with specific statutory authority and the 2005 Code with general statutory authority to the public service organisations covered respectively

18. This option would require some action on the part of the Welsh Government to update both the 2003 and 2005 Codes. In addition to this there is a requirement in Section 26 of the Local Government Act 1999 to consult on guidance issued under Section 19 of that Act. As a consequence a consultation would need to be undertaken prior to reissuing the 2003 Code under specific statutory authority. In practice the Welsh Government would undertake consultations on both Codes.

19. Subject to some redrafting of the Codes, this would have the advantage of addressing some of the issues that have come to light since the removal of the English Codes including:
- Awareness of the Codes;
 - Concern over their status;
 - Differing interpretation over application; and
 - Confusion over their coverage (which public service bodies are included).
20. There are, however, some limitations. The 2003 Code could be reissued under the Local Government Act 1999. This would include those bodies which are subject to the guidance under Section 17 of the Local Government Act 1988 (County Councils, County Borough Councils and National Park Authorities) and could also cover Fire and Rescue Authorities and Community Councils.
21. To apply the Code to other bodies could then involve a number of existing legal mechanisms which are specific to different sectors. This would mean that different sectors would have to take note of the Code to differing levels depending on what the legislation stated.
22. For instance if the Code was issued to NHS bodies by using sections 12(3) and 19(1) of the National Health Services (Wales) Act 2006. The Code would be applied via a direction which is more compulsive than guidance. Whereas, if the Code was applied to governing bodies of maintained schools (as was done in England) by making regulations under paragraph 4(a) of Schedule 1 to the Education Act 2002, the governing bodies would only be required to have regard to the code.
23. The continued existence of two Codes may also result in some confusion in the wider public.

Option 3 – Amalgamate the 2003 Code and the 2005 Code and issue across the Welsh public service under a range of items of statute, providing both general and specific statutory authority

24. As with Option 2, this option would require some action on the part of the Welsh Government. Work would be required to update and amalgamate the text of the Codes and a consultation on the text of the revised Code would be required to meet the requirements of Section 26 of the Local Government Act 1999.
25. Subject to some redrafting, this would have the advantage of addressing some of the issues that have come to light since the removal of the English Codes including:
- Awareness of the Codes;
 - Concern over their status;
 - Differing interpretation over application; and

- Confusion over their coverage (which public service bodies are included).

26. As this would involve issuing one Code, with a schedule specifying the public service organisations it was being issued to and the statutory provision being used in respect of each organisation, this would remove any confusion associated with the issuing of two near identical Codes. However, the issues with regards to the range of powers used to apply the Codes as set out in Option 2 would still apply.

Option 4 – Bring forward an Assembly Bill providing new powers for the Welsh Ministers to issue the Code under specific statutory authority across the Welsh public service.

27. This option would require primary legislation in the form of an Assembly Bill.

28. Any provision included within an Assembly Bill in respect of the Code would need to be within the legislative competence of the National Assembly for Wales as set out in Schedule 7 to the Government of Wales Act 2006. There are some areas around the devolved subjects in Schedule 7 to the Government of Wales Act 2006 where there is an implied cross-over into employment law. However, both employment law and industrial relations are not considered generally to be devolved matters.

29. The policy intent of the Welsh Ministers in bringing forward such legislation would be to enable the issuing of a single Code to all parts of the Welsh public service under specific statutory authority. Given the position in relation to both employment law and industrial relations, this would make the drafting of any provisions in respect of the Code a complex matter. The extent of the devolution settlement in respect of these areas has not been tested in court and it may be that there would be some restrictions as to how far the provisions in any Assembly Bill could go.

30. The important point here is to draw a distinction between the executive functions of the Welsh Ministers and the legislative competence of the National Assembly for Wales. The Welsh Ministers hold a number of functions under existing legislation passed both before and after the establishment of the National Assembly for Wales. These functions can be exercised by the Welsh Ministers in line with the terms on which they have been transferred. The legislative competence in respect of the National Assembly for Wales is as set out in Schedule 7 to the Government of Wales Act 2006. There are sometimes some operational variations between the two.

31. It is unlikely that Ministers would seek to place the requirements of the Code on the face of the Bill, opting instead for an enabling power in respect of the Code, with the Code itself issued after enactment of any Act. This would retain flexibility to revisit and reissue the Code in light of

any future changes. Consultation on the terms of any Code would be required as Ministers would not want to reduce the scrutiny associated with the existing Codes.

32. On that basis, the creation of provisions in an Assembly Bill, while likely to clarify and standardise the terms on which any Code is issued, would be more time consuming and in the interim the issues associated with the application and implementation of the Codes would remain.

Preferred option

33. The preferred option is Option 3 – Amalgamate the 2003 Code and the 2005 Code and issue across the Welsh public service under a range of items of statute, providing both general and specific statutory authority.
34. This option would result in a single Code, addressing any lingering confusion around the existence of two codes. It would also enable the Welsh Ministers to clarify which public service organisations were covered, the basis under which the Code was issued and the application of the Code to all relevant outsourcing arrangements. Consultation on a draft Code and reissuing a single Code would also address issues around awareness.
35. While Option 3 would see the Code issued to different parts of the public service under different legislation, this would all be set out within the Code itself. Utilising existing legislation would enable the issues already identified in respect of the application of the Code to be addressed relatively quickly. The Welsh Ministers would then keep application of the Code under review and could return to Option 4 in the future if necessary.

Costs and Benefits

36. The nature of this Code – in seeking to protect the terms and conditions of hypothetical **future** members of the workforce – means that it is very difficult to estimate the costs and benefits associated with the proposals. The following sections attempt to identify the groups that will be affected under each option but it has not been possible to quantify the costs and benefits.

Costs

Option 1 – Do Nothing

37. There are no additional costs associated with this option as it will not introduce any new provisions or require any additional work.
38. In this option, there is a risk that where services are contracted out by a public sector organisation not covered by either the 2003 Code or the 2005 Code, the terms and conditions offered by the service provider to

new employees could be less favourable than those of the transferring/existing staff.

39. The latest Workplace Employment Relations Study¹ suggests that there has been little change in the number of organisations contracting out services in recent years. However, there is a concern that, given the current economic situation and constrained budgets, more public sector organisations may consider outsourcing services in an effort to reduce future costs.
40. A survey undertaken by Unison prior to the introduction of the 2003 Code identified a number of examples whereby the terms and conditions offered to new starters were less favourable than those offered to transferred (existing) staff. The survey looked at 190 local government contracts in England awarded to private sector companies or voluntary organisations during 2000/01. There has been no equivalent survey undertaken in Wales. The Unison survey considered a number of different aspects of an employee's terms and conditions and asked whether the package offered to new employees was better, the same or worse than that for transferred (existing) staff.

Terms and Conditions offered to new staff compared to transferred (existing staff)

	Better	Same	Worse	Don't Know
Basic Pay	4%	27%	62%	7%
Sick Pay	0%	31%	58%	11%
Annual Leave	0%	20%	73%	7%
Pension Scheme	0%	33%	51%	16%
Job Security	0%	31%	44%	25%

Source: Best Value and the Two-Tier Workforce in Local Government, Unison, 2002.

41. In 2006, the (then) Department on Trade and Industry (DTI) published a regulatory impact assessment relating to the Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE). That RIA assumed that, in the absence of TUPE, the remuneration package offered to new employees would be worth 15% less than that of existing employees. Latest data from the Annual Survey of Hours and Earnings (ASHE)², shows that median gross weekly earnings for full-time employees in Wales in April 2012 were approximately £453. On this basis, the difference in the

¹ Van Wanrooy, B., Bewley, H., Bryson, A., Forth, J., Freeth, S., Stockes, L. and Wood, S. The 2011 Workplace Employment Relations Study: First Findings. Co-sponsored by BIS, ACAS, ESRC, UKCES and NIESR.

² The Annual Survey of Hours and Earnings (ASHE) is undertaken by the Office for National Statistics. Latest details are available from the following link:
<http://www.ons.gov.uk/ons/publications/all-releases.html?definition=tcm%3A77-21502>

remuneration package offered to new employees would be approximately £68 per week or a little over £3,500 per year.

42. In addition to the adverse impact on the individual employee, workforce unions have tended to campaign against two-tier structures because they are said to be bad for employee morale and productivity and result in increased employee turnover

Option 2 – Reissue the 2003 Code with specific statutory authority and the 2005 Code with general statutory authority to the public service organisations covered respectively

Preparation Costs

43. There would be some costs here for the Welsh Government in both revising the text of the 2003 and 2005 Codes and undertaking the required consultation in respect of the revised 2003 Code. In practice there would also be a consultation on the revised 2005 Code. This work would be undertaken by a team of officials from the Local Government and Communities Department, with input from other departments as required.

44. It is estimated that preparation of a consultation paper would take approximately 12 weeks. Consultation would be undertaken over the minimum period of 12 weeks set out within the Local Government Partnership Scheme and a further 8 weeks would then be required to analyse the consultation responses, advise Ministers and make amendments to the Codes. This assumes the consultation would not raise any significant issues that could not be addressed. Additional time would be required if there were issues to address.

45. Assuming preparation could take between 32 and 40 weeks, and based on FTE posts, the maximum input would be:

Grade	% of Time	Cost (£)
SCS1	15%	11,694
EB1	40%	25,136
EB2	70%	35,504
EB2	20%	10,144
MB1	40%	15,168
MB3	10%	2,340

46. Input from other Welsh Government departments would be required but this is thought to be minimal and so has not been assessed.

47. Some costs would be incurred by correspondent respondents. These would be broadly administrative in nature, though in responding to the consultation input may be required from a range of areas including legal, human resources, policy and workforce planning. These would vary between organisations depending on structure, awareness of the issues

and length of response and cannot be accurately quantified. They are not considered to be excessive and in any case, response to consultations is optional.

Transitional Costs

48. There will be a cost incurred by public sector organisations in having to familiarise themselves with the new Codes. Given that there are similar codes already in existence, and in reissuing the Codes under this option the Welsh Ministers would not be altering their status or coverage, the time required for organisations to familiarise themselves with the new Codes is expected to be relatively small.
49. For the purposes of this Impact Assessment it is assumed that public sector organisations in Wales will require half a day of a lawyers time and half a day of a HR advisors time to become familiar with the legislation. Based on typical salary levels for these professions³, the familiarisation costs are expected to total approximately £12,000.
50. It is assumed that, with the exception of very large companies, individual service providers will experience a contracting out process relatively infrequently. As a result, each time they go through such a process they will need to familiarise themselves with the legislation (and the differences in legislation in Wales and England). On this basis, there will be no additional familiarisation costs for service providers associated with the new legislation.

Recurrent Costs

51. There will be costs associated in implementing the revised Codes. As they would be issued on the same terms as the 2003 and 2005 Codes this is not thought to be any greater than the costs incurred by relevant public sector organisations in observing the requirements of the existing Codes. It is however recognised that not all organisations covered by the existing codes have been applying them appropriately. As a consequence those organisations may incur some costs in doing so.
52. Similarly, service providers could be adversely affected because they will be prevented from offering new employees less favourable conditions than existing/transferring staff.
53. There is no data available on the likelihood of future outsourcing, which means that it is not possible to quantify the scale of costs associated with application of the Code by each authority.
54. Where public sector services are contracted out, the service provider can be required to provide the public sector organisation or trade unions with the information needed to monitor compliance with the legislation should

³ As reported on www.payscale.com

they be requested. This will be on an ad-hoc basis. This is currently the case and so far there is only 1 incident where the terms and conditions have been queried by a trade union, although the query went no further. This information will include the terms and conditions for transferred staff and the terms and conditions for employees recruited to work on the contract after the transfer. This information should be readily available to the service provider but there will be a small administrative cost for sending the information to the public sector organisation.

Option 3 – Amalgamate the 2003 Code and the 2005 Code and issue across the Welsh public service under a range of items of statute, providing both general and specific statutory authority

Preparation Costs

55. These are considered to be similar to those for Option 2. The time required to prepare one Code is no more or less than to prepare two given the existence of current Codes which can be used as a template. The costs associated with responding to such a consultation are also assumed to be in the same range as those in Option 2. These cannot be quantified and as with Option 2, responding to a consultation remains optional.

Transitional Costs

56. These are considered to be similar to those for Option 2. The text of a single Code would be based on the text of the existing 2003 and 2005 Codes, which are broadly the same.

57. The single Code would specify which public service organisations were covered and under what statutory authority (whether general or specific) clarifying which organisations need to have regard to the requirements of the Code.

Recurrent Costs

58. These are considered to be similar to those for Option 3. There would be some costs in applying the terms of the Code for both public service organisations and service providers. However, as it is not possible to quantify the number or type of outsourcing arrangements entered into it is not possible to quantify these costs.

Option 4 – Bring forward an Assembly Bill providing new powers for the Welsh Ministers to issue the Code under specific statutory authority across the Welsh public service.

Transitional costs

59. There will be a cost incurred by public sector organisations in having to familiarise themselves with the new legislation. Given that there are similar codes already in existence, the time required for organisations to

familiarise themselves with the new legislation is expected to be relatively small and similar to that set out in Option 2. For the purposes of this Impact Assessment it is assumed that public sector organisations in Wales will require half a day of a lawyers time and half a day of a HR advisors time to become familiar with the legislation. Based on typical salary levels for these professions⁴, the familiarisation costs are expected to total approximately £12,000.

60. As with Option 3, the legislation may result in the issuing of a Code under specific statutory authority to a greater number of public service organisations. If the Welsh Minister's choose to exercise this power then the organisation(s) involved would also need to familiarise themselves with the legislation.
61. As with previous options, it is assumed that, with the exception of very large companies, individual service providers will experience a contracting out process relatively infrequently. As a result, each time they go through such a process they will need to familiarise themselves with the legislation (and the differences in legislation in Wales and England). On this basis, there will be no additional familiarisation costs for service providers associated with the new legislation.

Recurrent Costs

62. These are considered to be similar to those for Options 2 and 3. There would be some costs in applying the terms of the Code for both public service organisations and service providers.
63. The Welsh Government recognises that an argument could be made that in requiring the implementation of the Code, there is a resultant reduction in the flexibility of public service organisations to respond to financial pressures. Outsourcing of public services may be one options considered in reducing overheads. Requiring implementation of the Code could limit options to reduce costs and lead to a smaller field of interested service providers.
64. As it is not possible to quantify the number or type of outsourcing arrangements entered into it is not possible to quantify these costs.

Benefits

Option 1 – Do Nothing

65. There are no additional benefits associated with this option as it will maintain the status quo. Those parts of the public sector not covered by the existing codes will retain the current levels of flexibility in service delivery and service providers will retain the ability to offer new employees

⁴ As reported on www.payscale.com

terms and conditions which are less favourable than existing/transferring staff.

Option 2 – Reissue the 2003 Code with specific statutory authority and the 2005 Code with general statutory authority to the public service organisations covered respectively

66. As with Option 1, there are no additional benefits associated with this option. While the text of both the 2003 and 2005 Codes would be updated they would be issued to the same public service organisations under the same legislative authority.

67. Those parts of the public sector not covered by the existing codes will retain the current levels of flexibility in service delivery and service providers will retain the ability to offer new employees terms and conditions which are less favourable than existing/transferring staff.

Option 3 – Amalgamate the 2003 Code and the 2005 Code and issue across the Welsh public service under a range of items of statute, providing both general and specific statutory authority

68. This option could see an extension in the number of public service organisations that receive the Code under specific statutory authority. Extending the existing code to cover more of the public sector in Wales could potentially benefit future employees by preventing service providers from offering less favourable terms and conditions than the existing workforce.

69. This option protects future employees by preventing service providers from offering less favourable terms and conditions than the existing workforce. As well as protecting the individual employee, there are further potential benefits from preventing a two-tier structure developing in a workplace. It has been suggested that two-tier workforces are bad for employee morale, reduce productivity and increase staff turnover.

70. For the reasons discussed above, it is not possible to estimate how many future employees stand to benefit from the legislation.

71. In addition to protecting the individual employee, there are further potential benefits from preventing a two-tier structure developing in a workplace. As noted above, it has been suggested that two-tier workforces are bad for employee morale, reduce productivity and increase staff turnover.

Option 4 – Bring forward an Assembly Bill providing new powers for the Welsh Ministers to issue the Code under specific statutory authority across the Welsh public service.

72. The benefits associated with Option 4 are similar to those identified for Option 3. This option will also protect future employees by preventing

service providers from offering less favourable terms and conditions than the existing workforce. As well as protecting the individual employee, there are further potential benefits from preventing a two-tier structure developing in a workplace. It has been suggested that two-tier workforces are bad for employee morale, reduce productivity and increase staff turnover.

73. Future employees will be protected from potentially less favourable terms and conditions than existing/transferred staff.

Equality Impact Assessment (EIA) Template – Part 1

Policy title and purpose (brief outline):	The Code of Practice on Workforce Matters: public service outsourcing and the two-tier workforce.
Name of official:	Nicola Edwards
Department:	Local Government & Communities
Date:	15 July 2013
Signature:	

1. Please provide a brief description of the policy/decision.

For example what is the overall objective of the policy/decision, what are the stated aims (including who the intended beneficiaries are), a broad description of how this will be achieved, what the measure of success will be, and the time frame for achieving this?

The Code of Practice on Workforce Matters was originally issued in Wales in 2003 under the Local Government Act 1999. This followed the issuing of a similar Code of Practice in England. They were part of a series of documents issued by the UK and Welsh Governments with a view to dealing with what were perceived as potential disadvantages to:

- public sector staff who were transferred to the private sector, usually as a result of an out-sourcing contract; and
- staff recruited by the contractor to work alongside the transferred workforce.

The code aims to ensure that where the delivery of public services is outsourced to a third party (including the private or third sector), and where employees are transferred to the service provider under TUPE (Transfer of Undertakings and Protection of Employment), new recruits to the service provider undertaking work on that contract would be employed on terms and conditions no less favourable than transferred staff. This is the provision which has given the Codes the moniker of the "Two-Tier Workforce Code", as it is essentially attempting to prevent the development of a workforce on two sets of terms and conditions.

The Code of Practice also covers pension arrangements and places a duty on the public body awarding the contract to monitor its implementation by the private contractor

There have been two Two-Tier Workforce Codes in place in Wales over the years; a statutory code for best value authorities (now improvement authorities) and a non-statutory code for the remainder of the public service. The Welsh Two-Tier Workforce Codes broadly replicated the equivalent Codes issued in England.

It is the intention of the Welsh Ministers to revise the Code of Practice and consult on its provisions in the autumn of 2013, with a view to reissuing the Code in early 2014. Within the consultation the Welsh Ministers would also set out their intention to extend the statutory coverage of the Code to other parts of the public sector than those covered within the Local Government Act 1999.

We envisage that the primary beneficiaries of the code will be existing and newly employed staff contracted to undertake certain out-sourced public service functions.

2. We have a legal duty to engage with people with protected characteristics under the Equality Act 2010 (please refer to Annex A of the EIA guidance) identified as being relevant to the policy. What steps have you taken to engage with stakeholders, both internally and externally?

Matters relating to the Code of Practice were included in the 2012 Green Paper 'Consultation on Working Together for Wales: The Public Service Workforce' (May – July). A specific question was asked in relation to placing the Code on a statutory basis. However, at that time it was believed that the existing statutory Code was no longer in place and the proposal was in respect of an Assembly Act, rather than reissuing the code under existing legislation.

Six informal stakeholder events were held during the consultation period. Consultation was primarily directed at public service employers and trade unions. These organisations all comply with relevant equalities legislation and represent people with protected characteristics.

During the consultation individual employees were not directly engaged by the Welsh Government. This was considered to be best handled by their representative organisations, who were engaged by the Welsh Government. Some individuals did respond directly to the consultation but did not identify themselves as having protected characteristics.

The Green Paper and summary of responses are available here:

<http://wales.gov.uk/consultations/improving/workingtogether/?status=closed&lang=en>

Following the Green Paper, regular meetings have been held with the Wales TUC and the Welsh Local Government Association. Specific reassurance has been provided by the Wales TUC as to their policies in respect of the representation of people with protected characteristics.

Papers have been presented to the Workforce Partnership Council, which is attended by representatives of all sectors within the devolved public service. An internal facing Project Board has also been established including representation from all Welsh Government Departments.

3. Your decisions must be based on robust evidence. What evidence base have you used? Please list the source of this evidence e.g. National Survey for Wales. Do you consider the evidence to be strong, satisfactory or weak and are there any gaps in evidence?

The extant Code of Practice on Workforce Matters applies to all employees covered by the relevant circumstances regardless of whether or not they have any protected characteristics.

There is no evidence available as to the impact of either the statutory or voluntary Codes on people with protected characteristics. The extant Codes operate alongside relevant legislation in respect of equal opportunities and anti-discrimination; they seek to ensure the application of relevant provisions rather than require additional duties and responsibilities. No formal research on the application of the Codes has been undertaken in England or Wales.

What evidence is available in relation to the need for such Codes is anecdotal and primarily derived from trade unions. These are focussed around the need for such Codes to prevent workforce matters not being given proper attention during the process of outsourcing public services and new employees were being employed on worse pay and terms and conditions to those who had transferred out of the public sector. Some anecdotal evidence has also been presented over the years in relation to the use of different terms and conditions for new employees to erode the pay and terms and conditions of all employees.

Given the anecdotal nature of the evidence and the lack of coverage of particular issues in relation to the protected characteristics this is considered to be weak. However, there is no other readily available information or evidence.

It is important to note any opportunities you have identified that could advance or promote equality.

Impact

Please complete the next section to show how this policy / decision / practice could have an impact (positive or negative) on the protected groups under the Equality Act 2010 (refer to the EIA guidance document for more information).

Lack of evidence is not a reason for *not* progressing to carrying out an EIA. Please highlight any gaps in evidence that you have identified and explain how/if you intend to fill these gaps.

4.1 Do you think this policy / decision / practice will have a positive or negative impact on people because of their age?

Age	Positive	Negative	None / Negligible	Reasons for your decision (including evidence) / How might it impact?
Younger people (<i>Children</i>)			x	There is no formal evidence in relation to this group.

<i>and young people, up to 18)</i>				In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees, which should result in negligible benefits for all employees equally regardless of their age.
People 18-50			x	There is no formal evidence in relation to this group. In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.
Older people (50+)			x	There is no formal evidence in relation to this group. In reissuing the Code of Practice, Welsh

				Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.
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4.2 Because they are disabled?

Impairment	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
Visual impairment			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.</p>
Hearing impairment			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code</p>

				<p>of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.</p>
Physically disabled			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.</p>
Learning disability			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the</p>

				<p>extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.</p>
Mental health problem			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.</p>
Other impairments issues			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing,</p>

				formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.
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4.3 Because of their gender (man or woman)?

Gender	Positive	Negative	None / Negligible	Reason for your decision (including evidence)/ How might it impact?
Male			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.</p>
Female			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a</p>

				statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.
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4.4 Because they are transgender?

Transgender	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.</p>

4.5 Because of their marriage or civil partnership?

Marriage and Civil Partnership	Positive	Negative	None / Negligible	Reason for your decision (including evidence)/ How might it impact?
Marriage			x	There is no formal

				<p>evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.</p>
Civil Partnership			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.</p>

4.6 Because of their pregnancy or maternity?

Pregnancy and	Positive	Negative	None / Negligible	Reason for your decision (including
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Maternity				evidence) / How might it impact?
Pregnancy			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.</p>
Maternity (the period after birth)			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.</p>

4.7 Because of their race?



Race	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
Ethnic minority people e.g. Asian, Black,			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.</p>
National Origin (e.g. Welsh, English)			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.</p>



Asylum Seeker and Refugees			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.</p>
Gypsies and Travellers			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.</p>
Migrants			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh</p>

				Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.
Others			x	There is no formal evidence in relation to this group. In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.

4.8 Because of their religion and belief or non-belief?

Religion and belief or non – belief	Positive	Negative	None / Negligible	Reason for your decision (including evidence)/ How might it impact?
Different religious groups including			x	There is no formal evidence in relation to this group.

Muslims, Jews, Christians, Sikhs, Buddhists, Hindus, Others (please specify)				In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.
Belief e.g. Humanists			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.</p>
Non-belief			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and</p>

				place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.
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4.9 Because of their sexual orientation?

Sexual Orientation	Positive	Negative	None / Negligible	Reason for your decision (including evidence)/ How might it impact?
Gay men			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.</p>
Lesbians			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the</p>

				coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.
Bi-sexual			x	<p>There is no formal evidence in relation to this group.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.</p>

4.10 Do you think that this policy will have a positive or negative impact on people’s human rights? Please refer to point 1.4 of the EIA Annex A - Guidance for further information about Human Rights.

Human Rights	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
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Human Rights including Human Rights Act and UN Conventions			x	<p>There is no formal evidence in relation to this area.</p> <p>In reissuing the Code of Practice, Welsh Ministers are seeking to affirm the coverage of the extant two-tier workforce codes and place both on a statutory footing, formalising existing arrangements. This is intended to ensure fairness in the treatment of employees.</p>
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If you have identified any impacts (other than negligible ones), positive or negative, on any group with protected characteristics, please complete Part 2.

Only if there are no or negligible positive or negative impacts should you go straight to part 2 and sign off the EIA.

Equality Impact Assessment – Part 2

1. Building on the evidence you gathered and considered in Part 1, please consider the following:

1.1 How could, or does, the policy help advance / promote equality of opportunity?

For example, positive measures designed to address disadvantage and reach different communities or protected groups?

The provisions of the Code of Practice are concerned with increasing equality and fairness within the devolved public service workforce.

Specifically the Code is designed to ensure that where public service functions and employees are outsourced to a new employer, any new staff recruited to perform the same role will be subject to the same terms and conditions. This would apply to all staff regardless of whether or not they have any protected characteristics.

1.2 How could / does the policy / decision help to eliminate unlawful discrimination, harassment or victimisation?

The Code of Practice on Workforce Matters sets out how all staff transferring to a new employer on the outsourcing of delivery of public services should be treated, applying the principles of TUPE even where they are not strictly required. It also ensures the fair and equitable treatment of new staff recruited to work alongside those transferred at the start of the contract.

In seeking to ensure the fair treatment of all staff and preventing the emergence of a two-tier workforce the Code seeks to ensure the equal treatment of all employees.

1.3 How could/does the policy impact on advancing / promoting good relations and wider community cohesion?

The Code of Practice on Workforce Matters includes provisions relation to the treatment of existing staff transferred to a new employer and of new staff recruited to work alongside existing staff. It is intended to prevent the emergence of a two-tier workforce and the potential for a divided workforce that could arise from such a situation.

Taken together these should improve relations and cohesion within the workplace which could have a beneficial impact for those in receipt of public services.

2. Strengthening the policy

2.1 If the policy is likely to have a negative effect ('adverse impact') on any of the protected groups or good relations, what are the reasons for this?

What practical changes/actions could help reduce or remove any negative impacts identified in Part 1?

The policy is unlikely to have negative effects on any of the protected groups.

2.2 If no action is to be taken to remove or mitigate negative / adverse impact, please justify why. (Please remember that if you have identified unlawful discrimination (immediate or potential) as a result of the policy, the policy must be changed or revised.)

Not applicable.

3. Monitoring, evaluating and reviewing

How will you monitor the impact and effectiveness of the policy?

List details of any follow-up work that will be undertaken in relation to the policy (e.g. consultations, specific monitoring etc).

Implementation of the provisions of the Code of Practice will be a matter for the public service employers subject to the two-tier workforce code.

Monitoring arrangements in relation to the application of the Code of Practice will be set out within it when issued. Throughout the length of the contract, the service provider will provide the public service organisation with information as requested which is necessary to allow the public service organisation to monitor compliance with the conditions set out in the Code. This information will include the terms and conditions of transferred staff and the terms and conditions for employees recruited to work on the contract after the transfer. We could also seek information in relation to the protected characteristics.

The results of all impact assessments where the impact is significant will be published on the Welsh Government's website.

4. Declaration

The policy does not have a significant impact upon equality issues

Official completing the EIA
Name: Nicola Edwards
Department: Local Government and Communities
Date: 15 July 2013
Signature:
Head of Division (Sign-off)
Name: Pier Bisson
Job title and department: Head of Public Service Reform Division
Date:
Signature:
Review Date:



Privacy Impact Assessment (PIA) – Screening Tool

Please use the PIA Screening Tool to identify whether your proposal is likely to have an impact on privacy and require further assessment.

When complete, a copy of this document must be forwarded to the Information Rights Unit (IRU): DataProtectionOfficer@wales.gsi.gov.uk and copied to your [Information Asset Owner](#)

IRU will endeavour to respond within 5 working days.

Title of Proposal:	Code of Practice on Workforce Matters
Department:	Local Government & Communities
Lead Official:	Nicola Edwards
Information Asset Owner:	Nicola Edwards
PIA Reference Number:	

1. Please describe your proposal:

- (i) *If this is a change to an existing system/ project/ process/ policy then please outline the present arrangements and how personal data is currently processed.*
- (ii) *Detail how the new system/ project/ process/ policy will work, including how the personal data will be processed and whether the personal data will be shared with 3rd parties.*

The Code of Practice on Workforce Matters was originally issued in Wales in 2003 under the Local Government Act 1999. This followed the issuing of a similar Code of Practice in England. They were part of a series of documents issued by the UK and Welsh Governments with a view to dealing with what were perceived as potential disadvantages to:

- public sector staff who were transferred to the private sector, usually as a result of an out-sourcing contract; and
- staff recruited by the contractor to work alongside the transferred workforce.

The code aims to ensure that where the delivery of public services is outsourced to a third party (including the private or third sector), and where employees are transferred to the service provider under TUPE (Transfer of Undertakings and Protection of Employment), new recruits to the service provider undertaking work on that contract would be employed on terms and conditions no less favourable than transferred staff. This is the provision which has given the Codes the moniker of the "Two-Tier Workforce Code", as it is essentially attempting to prevent the development of a workforce on two sets of terms and conditions.

Privacy Impact Assessment (PIA) – Screening Tool

The Code of Practice also covers pension arrangements and places a duty on the public body awarding the contract to monitor its implementation by the private contractor

There have been two Two-Tier Workforce Codes in place in Wales over the years; a statutory code for best value authorities (now improvement authorities) and a non-statutory code for the remainder of the public service. The Welsh Two-Tier Workforce Codes broadly replicated the equivalent Codes issued in England.

It is the intention of the Welsh Ministers to revise the Code of Practice and consult on its provisions in the autumn of 2013, with a view to reissuing the Code in early 2014. Within the consultation the Welsh Ministers would also set out their intention to extend the statutory coverage of the Code to other parts of the public sector than those covered within the Local Government Act 1999.

2. Will the proposal involve the processing¹ of information that could be used to identify individuals (personal data)?

- No – There is no need to complete the remainder of this form. Please forward your answers to IRU at DataProtectionOfficer@wales.gsi.gov.uk
- Yes – Please complete the remainder of the form.

3. Has privacy impact screening or assessment already been carried out?

- Yes – Please provide details below. No

Details of completed PIA (date; outcomes)

4. Please tick the personal data items that will be processed:

- | | | |
|-----------------|--|--|
| Personal | <input type="checkbox"/> Name | <input type="checkbox"/> Telephone Numbers |
| | <input type="checkbox"/> Home Address | <input type="checkbox"/> Date of Birth |
| | <input type="checkbox"/> Business Address | <input type="checkbox"/> Driving Licence Number |
| | <input type="checkbox"/> Postcode | <input type="checkbox"/> Passport / ID Card Number |
| | <input type="checkbox"/> Email Addresses | <input type="checkbox"/> Photographs / images
(which could be used to identify an individual) |
| | <input type="checkbox"/> Unique identifying number
e.g. store loyalty card, library | <input type="checkbox"/> Other (please specify) |
| | | |

¹ The term 'processing' includes a wide range of activities such as collection, use, disclosure, retention or disposal of information.

Privacy Impact Assessment (PIA) – Screening Tool

card etc

Sensitive

- | | |
|---|---|
| <input type="checkbox"/> Racial / Ethnic Origins | <input type="checkbox"/> Biometric data e.g. DNA, finger-prints |
| <input type="checkbox"/> Political opinions | <input type="checkbox"/> Personal financial information (e.g. bank or credit card details) |
| <input type="checkbox"/> Religious beliefs | <input type="checkbox"/> Mother's maiden name |
| <input type="checkbox"/> Trade Union membership | <input type="checkbox"/> NI Number (or equivalent) |
| <input type="checkbox"/> Physical / mental health or condition | <input type="checkbox"/> Tax, benefits or pensions records |
| <input type="checkbox"/> Sexual life | <input type="checkbox"/> Health or social service records e.g. Housing or Child Protection |
| <input type="checkbox"/> Criminal & court records (inc. alleged offences) | <input type="checkbox"/> Employment records (inc. self-employment and voluntary work) |
| <input type="checkbox"/> Educational records | <input type="checkbox"/> Other (please specify) |

Details:

5. For the personal data being processed, please indicate:

Who the Data Controller is: <i>(see notes section for the definition of a Data Controller)</i>	<i>Details: In the case of joint data controllers, please indicate the personal data each has responsibility for.</i>
Any Data Processors: <i>(see notes section for the definition of a Data Processor).</i>	<i>Details: In the case of data processors, please indicate the personal data each has responsibility for.</i>
Will the data be shared?	<i>Details: Please specify if the data will be shared internally with other parts of the Welsh Government or externally with third parties. Also indicate if the personal data being shared is non-identifiable / anonymised.</i>

6. What is the legal basis for processing the data?

Details:

Privacy Impact Assessment (PIA) – Screening Tool

All of the Welsh Government's powers are derived from statute. Please identify the legal power the Welsh Government is exercising to carry out this proposal.

7. Will the proposal involve new or significantly changed processing of personal data about each individual?

Details:

For example, have you been collecting personal information from individuals for a particular purpose and would now like to use that information for a different purpose?

Data Handling

8. Will the personal data be consolidated, linked or matched with data from other sources?

Yes – Please provide details below. No – Go to Q9.

Details:

For example, are you planning to compare or link the data that you collect with data held in another database?

9. Does the proposal involve new or changed data collection, retention or sharing policies / practices for personal data?

Yes – Please provide details below. No – Go to Q10.

Details:

Technology

10. Will the proposal involve the introduction of privacy-intrusive technologies such as:

Yes – Please provide details below. No – Go to Q11.

- | | |
|---|--|
| <input type="checkbox"/> Smart cards | <input type="checkbox"/> Digital image and video recording |
| <input type="checkbox"/> RFID tags
<i>(radio-frequency identification)</i> | <input type="checkbox"/> Profiling, data mining or logging of electronic traffic
<i>(process to identify patterns in large data sets)</i> |
| <input type="checkbox"/> Biometrics | <input type="checkbox"/> Locator technologies (e.g. GPS, mobile phone tracking) |
| <input type="checkbox"/> Visual surveillance (e.g. CCTV) | <input type="checkbox"/> Other (please specify Details below) |

Details:

Privacy Impact Assessment (PIA) – Screening Tool

Identity

11. Will the proposal involve new or changed identity management or authentication processes?

Yes – Please provide details below. No – Go to Q12.

Details:

12. Will the proposal have the effect of enabling identification of individuals who were previously anonymous?

Yes – Please provide details below. No

Details:

When complete, a copy of this document must be forwarded to the Information Rights Unit (IRU): DataProtectionOfficer@wales.gsi.gov.uk and copied to your [Information Asset Owner](#)

Notes

Data controller means a person who (either alone or jointly in common with other persons) determines the purpose(s) for which and the manner in which any personal data are, or are to be, processed.

A data controller must be a “person” recognised in law i.e.:

- individuals;
- organisations; and
- other corporate and unincorporated bodies of persons.

Data controllers will usually be organisations, but can individuals e.g. the self employed / sole traders. Even if an individual is given responsibility for data protection in an organisation, they will be acting on behalf of the organisation, which will be the data controller.

In relation to data controllers, the term ‘jointly’ is used where two or more data controllers act together to decide the purpose and manner of any data processing. The term ‘in common’ applies where two or more data controllers share a pool of personal data that they process independently of each other.

Privacy Impact Assessment (PIA) – Screening Tool

Data controllers must ensure that any processing of personal data for which they are responsible complies with the DPA. Failure to do so risks enforcement action, even prosecution, and compensation claims from individuals.

Data processor means any person (other than an employee of the data controller) who processes the data on behalf of the data controller.

Data processors are not directly subject to the DPA (although most will also be a data controller in their own right for the processing they do for their own administrative purposes). Data controllers remain responsible for ensuring their processing complies with the DPA, whether they do the processing in-house or by engaging a data processor. Where roles and responsibilities are unclear, they will need to be clarified to ensure that personal data is processed in accordance with the data protection principles.

Privacy Impact Assessment (PIA) – Screening Tool

For completion by IRU:

Is a formal PIA assessment required for this proposal?

Yes No

Details:

Has advice on DPA compliance been provided?

Yes No

Details:

Rural Proofing Checklist

Division/Unit	Public Service Reform Division
Policy/Programme/Initiative to be rural proofed	Code of Practice on Workforce Matters
Key Contact	Nicola Edwards

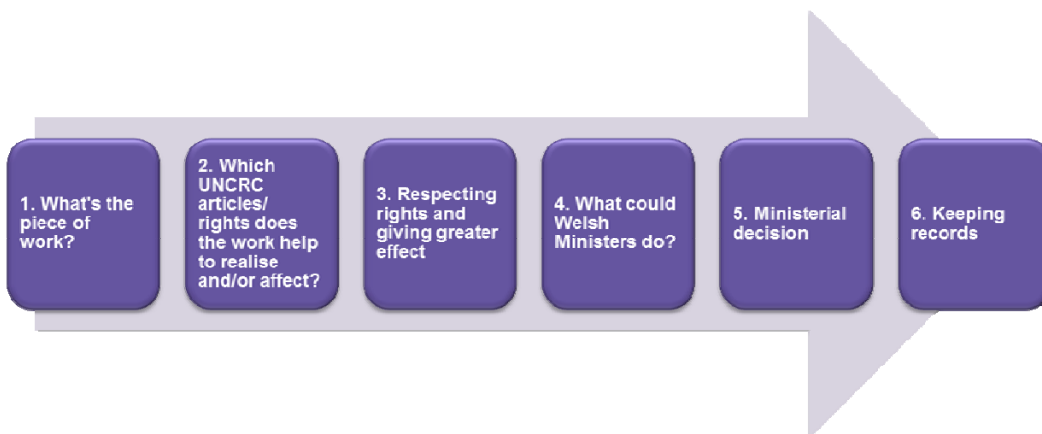
	Policy Question	Yes	No	Comment
1.	Will your policy affect the availability of other public and private services in the rural area?		x	The Code of Practice is concerned with the treatment of employees engaged in the delivery of public services rather than the extent of or location of those services.
2.	Could you deliver the policy you are proposing to implement through existing service outlets? E.g. schools, banks and GP surgeries			This question is not relevant to the policy proposals of the Code of Practice. This is not about the delivery of a new service or removing existing services. The Code is concerned with the treatment of employees engaged in the delivery of public services.
3.	Will there be an extra cost to delivering your policy to rural areas?		x	
4.	Will the policy affect travel needs or the ease and cost of travel for rural communities?		x	
5.	Does the policy rely on communicating information to clients?		x	
6.	Will the policy be delivered through the private sector or through a public-private partnership?			This is not about the delivery of a new service or removing existing services. The Code is concerned with the treatment of employees engaged in the delivery of public services. It applies regardless of whether those services are delivered by the public, private or third sector.
7.	Does the policy rely on		x	

	infrastructure for delivery that may put rural communities at a disadvantage? E.g. Broadband ICT, main roads and utilities			
8.	Will the policy impact on rural businesses particularly the self employed and micro businesses and on the Third Sector including social enterprises and local voluntary organisations?			<p>The policy proposals set out within the Code of Practice relate to the treatment of employees engaged in the delivery of public services where those services are out-sourced.</p> <p>Services could be out-sourced to the private or third sector, or other parts of the public sector, and the Bill would place certain responsibilities on both the transferor and transferee.</p>
9.	Will the policy have a particular impact on land based industries and therefore on rural economies and the environment?		x	
10.	Will the policy affect those on low wages or in part-time or seasonal employment?		x	<p>This is considered to be unlikely given that the Code of Practice is concerned with the delivery of public services which are generally available all year and seeks to ensure parity in treatment of existing and new employees in relation to terms and conditions, including salary.</p>
11.	Will the policy target disadvantaged people living in rural areas?		x	
12.	Will the policy rely on local organisations for delivery?		x	<p>The policy proposals set out within the Code of Practice relate to the treatment of employees engaged in the delivery of public services where those services are out-sourced.</p> <p>Services could be out-sourced to the private or third sector, or other parts of the public sector. It is conceivable that this could be undertaken by local organisations but it is not reliant on them.</p>
13.	Does the policy depend on a new building or development		x	

	site?			
14.	Will the policy impact on the quality and character of the natural and built rural landscape?		x	
15.	Will the policy impact on people wishing to reach and use the countryside as a place for recreation and enjoyment?		x	

Children's Rights – Six steps to 'Due Regard'

Please complete this form and we will keep it for your records. You may be asked to provide this document at a later stage to evidence that you have had due regard to children's rights when developing a policy or legislation. You may send your completed document here: Childrenandyoungpeoplesrights@wales.gsi.gov.uk



1. Does the work relate to legislation/policy?

The assessment has been completed in relation to the work on the Code of Practice on Workforce Matters.

The Code is part of a series of documents issued by the UK and Welsh Governments with a view to dealing with what were perceived as potential disadvantages to:

- public sector staff who were transferred to the private sector, usually as a result of an out-sourcing contract; and
- staff recruited by the contractor to work alongside the transferred workforce.

The Code aims to ensure that where public services are outsourced to a third party (a) staff will transfer and that TUPE will apply, and if TUPE does not strictly apply, the principles of TUPE should be followed; and (b) new recruits to the service provider undertaking work on that contract would be employed on terms and conditions no less favourable than transferred staff.

This is the provision which has given the Code the moniker of the "Two-Tier Workforce Code", as it is essentially attempting to prevent the development of a workforce working on a public services contract on two or more sets of terms and conditions. The Code also covers pension arrangements and requires the public body awarding the contract (in adherence to the Code) to monitor its implementation by the service provider.

There have been two Codes in place in Wales over the years: a code issued under specific statutory authority for some 'best value' authorities (now 'improvement authorities', in particular local authorities) and a code issued under general statutory authority for the remainder of the public service. The Welsh Codes broadly replicated the equivalent Codes issued in England.

Following the decision by the UK Government to remove the English Codes in 2010/11, the First Minister signalled the commitment of the Welsh Government to the Welsh Codes. A consultation on a single revised Code drawing together the content of the two existing

Codes and clarifying the organisations to which it applies and the statutory authority under which it has been issued will be undertaken in September 2013.

2. Which UNCRC articles/rights does the work help to realise and/or affect? (use the impact assessment to help you [here](#)).

Impact assessment completed, resulting in the following articles being identified as related to the piece of work:

Articles 1, 2, 3, 4, 12, 13, 14, 17, 27 and 32

3. Does your policy/legislation advice respect and or potentially conflict with any of the articles of the UNCRC?

[Article 1 – Everyone under 18 years of age has all the rights in this Convention:](#) The requirements of TUPE and the two-tier workforce codes do not cut across the rights under this Convention or prevent access to any of the rights under this Convention.

[Article 2 – The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from:](#) The requirements of TUPE and the two-tier workforce codes apply equally to all affected individuals regardless of their race, religion, ability, personal beliefs and opinions or background.

[Article 3 – All organisations concerned with children should work towards what is best for each child:](#) The requirements of TUPE Codes are such that they enable the transfer of existing employees (including those under 18 years of age) on their current terms and conditions. The two-tier workforce Codes require the recruitment of new employees (including those under 18 years of age) on no less favourable terms and conditions than those already employed by the public service provider under the relevant contract. This is intended to prevent the establishment of a two-tier workforce and so would prevent the recruitment of young people on lower terms and conditions.

[Article 4 – Governments should make these rights available to children:](#) The Welsh Government is committed to upholding the rights contained in this convention. The requirements of TUPE and the two-tier workforce codes do not cut across the rights under this Convention or prevent access to any of the rights under this Convention.

[Article 12 – Children should have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account:](#) Both TUPE and the two-tier workforce Code include the requirement to consult employees and / or their representatives.

[Article 13 - Right to get and share information:](#) The requirements of the TUPE and the two-tier workforce codes are such that they include provision for the sharing of information about employees. Information is required to be passed from the current employer to the new employer in advance of the transfer of the employee(s) concerned. There are statutory timing requirements within TUPE.

This is personal data concerning the employee and it is unlikely that it would be sought by, or released to, other individuals. Sharing of such data would need to be undertaken in a way that was consistent with the Data Protection Act 1998.

[Article 14 - Right to think and believe what they want and to practise their religion:](#) The requirements of TUPE and the two-tier workforce codes apply equally to all affected individuals regardless of their religious or personal beliefs.

[Article 17 - Children have the right to reliable information from the mass media. Television, radio and newspapers should provide information that children can understand, and should not promote materials that could harm children:](#) The requirements of TUPE and the two-tier workforce Codes have been set out in a clear format. Additional guidance can be provided if required and will be prepared in line with Government drafting requirements. Where appropriate young person friendly documents may be prepared.

[Article 27 - Children have a right to a standard of living that is good enough to meet their physical and mental needs. The Government should help families who cannot afford to provide this:](#) The requirements of the Code are such that anyone hired to work on a public service contract outsourced to an external service provider should be recruited on terms and conditions no less favourable than those of any existing employees transferred to the service provider under the terms of TUPE. This prevents the establishment of a two-tier workforce and should ensure that any children or young people recruited to work on such a contract by a service provider receive no less favourable terms and conditions than the existing workforce.

[Article 32 – The Government should protect children from work that is dangerous or might harm their health or their education:](#) The requirements of TUPE and the two-tier workforce codes do not cut across the rights under this Convention or prevent access to any of the rights under this Convention.

4. If so what could Welsh Ministers do?

Welsh Ministers are consulting on a revised Code of Practice on Workforce Matters in September 2013 with a view to issuing a revised Code in early 2014.

The provisions in relation to the two-tier workforce code will apply to all employees of relevant public service employers, where their posts are amongst those considered for transfer to another employer as part of the outsourcing of functions. They apply regardless of age and cover all working age employees equally. The provisions seek to ensure parity in the workplace and will ensure that existing arrangements are reconfirmed and extended to all parts of the devolved public service.

There is a possibility that the provisions could impact on those children and young people of working age (16-18), but in doing so would ensure that they were treated equally as compared with other employees and not subject to age related discrimination.

A young person friendly consultation document has not been prepared at this time. Efforts have been made to ensure that the consultation paper and draft code are clear to all age groups. Consideration will be given to the need for young person friendly guidance or information documents disseminated in relation to the Code in the future.

5. What was the Ministerial Decision?

Welsh Ministers have indicated their intention to bring forward a revised Code in early 2014 subject to the outcome of the consultation.

6. Keeping records –

Welsh Government: Welsh Language Scheme

New Policy Impact Assessment

Policy name: Code of Practice on Workforce Matters

Responsible officer: Nicola Edwards

As you answer each question, you should consider the suggestions set out in **annex 1**.

As you complete this form, you should bear in mind any commitments set out in A living language : a language for living, the Government's current Welsh language strategy, and the Welsh Government's Welsh Language Scheme (please see annex 1).

If, after considering all the questions in this impact assessment, you feel that there are no significant links between the policy under development and the language, please complete **only** the declaration at annex 2.

Question 1

Do you have all the expertise you require to consider the link between the policy and the Welsh language?

Yes.

While there are no Welsh language users within the immediate Bill Team, there are a number of Welsh language users within Public Services Reform Division and the People, Places and Corporate Services Department that have been able to advise on these issues. In addition to this the Bill Team will be seeking the views of stakeholders on the Welsh Language Policy Impact Assessment as part of the consultation.

Question 2

Can the policy be enhanced to include elements that will help promote, support and develop the language?

No.

The Code of Practice on Workforce Matters was originally issued in Wales in 2003 under the Local Government Act 1999. This followed the issuing of a similar Code of Practice in England. They were part of a series of documents issued by the UK and Welsh Governments with a view to dealing with what were perceived as potential disadvantages to:

- public sector staff who were transferred to the private sector, usually as a result of an out-sourcing contract; and

- staff recruited by the contractor to work alongside the transferred workforce.

The code aims to ensure that where the delivery of public services is outsourced to a third party (including the private or third sector), and where employees are transferred to the service provider under TUPE (Transfer of Undertakings and Protection of Employment), new recruits to the service provider undertaking work on that contract would be employed on terms and conditions no less favourable than transferred staff. This is the provision which has given the Codes the moniker of the "Two-Tier Workforce Code", as it is essentially attempting to prevent the development of a workforce on two sets of terms and conditions.

The Code of Practice also covers pension arrangements and places a duty on the public body awarding the contract to monitor its implementation by the private contractor

There have been two Two-Tier Workforce Codes in place in Wales over the years; a statutory code for best value authorities (now improvement authorities) and a non-statutory code for the remainder of the public service. The Welsh Two-Tier Workforce Codes broadly replicated the equivalent Codes issued in England.

It is the intention of the Welsh Ministers to revise the Code of Practice and consult on its provisions in the autumn of 2013, with a view to reissuing the Code in early 2014. Within the consultation the Welsh Ministers would also set out their intention to extend the statutory coverage of the Code to include:

- Local Authorities;
- National Park authorities;
- Fire and Resuce Service Authorities;
- Community Councils;
- Governing Bodies of Maintained Schools;
- NHS Trusts and Local Health Boards; and
- Welsh Government Sponsored Bodies.

We envisage that the primary beneficiaries of the code will be existing and newly employed staff contracted to undertake certain out-sourced public service functions. The code itself and any additional supporting guidance will be issued bilingually.

Question 3

Is there a risk that the policy may have a negative impact on the language?

No.

The policy scope of the Code is limited to application in terms of the devolved public service workforce, which is already subject to legislation in respect of the Welsh language. The provisions proposed for inclusion within the Code

relate to the maintenance and extension of the terms and conditions of existing employees undertaking public service functions that are outsourced.

All public service employee terms and conditions are required to be compliant with relevant legislation. The provisions proposed for inclusion within the Code are not seeking to change that legislation.

Question 4

Can the policy include standards to be met and / or targets to help measure success in promoting the language?

No.

It would not be appropriate to include such targets within any Code of Practice, the principle of which is to ensure that new employees are treated equally with existing or transferred employees. If however such targets were contained within the terms and conditions of existing employees they could conceivably be replicated in the terms and conditions of any new employees by virtue of the code.

Question 5

Can the policy lead to increased opportunities to use Welsh in the workplace?

No.

The code would only apply in instances where a transfer of staff had taken place under TUPE (Transfer of Undertakings and Protection of Employment). TUPE ensures that staff transfer on their existing terms and conditions including, where appropriate, any terms and conditions relating to the use of the Welsh language. Under the code 'new joiners' must be hired on terms no less favourable than those staff subject to the earlier TUPE transfer. The outcome of this would be to maintain pre-existing opportunities to use Welsh in the workplace

Question 6

Can the policy enable you to place conditions (&/or monitor these) with regard to the use of Welsh by third parties?

No.

Question 7

Will the policy lead to primary or secondary legislation?

Yes.

The Code of Practice is a statutory document issued under the Local Government Act 1999. It is considered to be non-SI secondary legislation. The Code of Practice is concerned with the treatment of existing and new employees. It is not envisaged that there will be any specific provisions in relation to the Welsh language.