



Llywodraeth Cymru
Welsh Government

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Welsh Government

Green Paper

Consultation on Working Together for Wales The Public Service Workforce

Date of issue: **08 May 2012**

Action required: Responses by **31 July 2012**

Overview

The Welsh Government is considering legislation relating to public service workforce. This Green Paper seeks responses to the proposed content of any legislation.

How to respond

Closing date for responses is **31 July 2012**.

Responses can be submitted via the response form on our website: www.wales.gov.uk

Alternatively, please use the response form at Annex B of this consultation document to respond. These responses should be returned either electronically or by post to:

e-mail: workingtogether@wales.gsi.gov.uk

Post:

Social Partnership Policy Team
People, Places and Corporate Services
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Further information and related documents

Large print, Braille and alternate language versions of this document are available on request.

The consultation document can be accessed from the Welsh Government website at: www.wales.gov.uk/consultations

Related Documents:

A Strategic Framework for the Public Service Workforce in Wales (2012)

A Compact for Change between the Welsh Government and Welsh local government (2011)

Contact details

For further information:

e-mail: workingtogether@wales.gsi.gov.uk

Telephone: 029 2082 5599

Data protection

How the views and information you give us will be used.

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full.

Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government.

This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Green Paper – Working Together for Wales: The Public Service Workforce

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Foreword

Welsh Government has a clear agenda in relation to public services: an agenda of continual improvement aimed at better services for the citizen and protecting the jobs of our public service workers. We aim to achieve this through partnership between Welsh Government and other devolved public bodies and, crucially, partnership between employers and employees.

At the heart of this agenda is the Workforce Partnership Council which brings together all the key representatives of the devolved public service employers and trade unions. Through the Workforce Partnership Council, we achieved unanimous agreement on a Memorandum of Understanding between local authorities and trade unions aimed at preventing compulsory redundancies. That Memorandum has had a major impact in reducing job losses; we need to build on this success.

There are other examples of our partners agreeing to measures aimed at ensuring greater fairness for our workforce, for example in relation to protecting the terms and conditions of workers in enterprises providing public services and which were, but are no longer, part of the public sector - the "Two Tier Code". However all these agreements, being voluntary, are vulnerable to disruption or even collapse if one or two partners unilaterally withdraw.

As a government we are aiming to achieve fairness for the greatest number and there will be times when it would be inequitable to always have to achieve unanimous agreement before we can move forward with an agreement that the clear majority believes is in the best interests of the people of Wales.

Following the successful referendum in 2011 we now have the option to use our new legislative powers to strengthen these agreements and other issues affecting the Welsh public service workforce.

The purpose of this Green Paper is to set out Welsh Government's priorities and to seek views on how and in what areas we should use these powers to achieve our desire to provide world class public services through a valued and engaged workforce.

Carl Sargeant AM
Minister for Local Government and Communities

Introduction

1. The Welsh Government understands the importance of the public service workforce and its critical role in our ambitions for public service improvement and better outcomes. This is why we have produced a comprehensive cross-sector workforce strategy to set out our vision - linking better workforce management and engagement, based around social partnership, with improved public services.
2. We want to see sustained and closer engagement between service providers, particularly front-line staff and the citizen in the design, delivery and scrutiny of public services in Wales. This is vital if we are to be a small, clever country playing to our strengths, talents and resources. Without an understanding of what they are to deliver and how it contributes to organisational success, even the most committed employee will struggle to be high performing.
3. The Welsh Government believes legislation is needed in the specific areas set out below to achieve that vision and ensure our responses to changing needs are quick, consistent and are not held up by internal bureaucracy while protecting public service jobs and securing public service expertise.
4. Fundamentally this Green Paper addresses the need for cultural and structural change in workforce relationships; in management, engagement and support in order to move from traditional employee relations towards an approach based on partnership, mutual respect and trust.
5. It sets out the values and principles clearly articulated in our recently published *Working Together For Wales - A Strategic Framework for the Public Service Workforce in Wales* (the Strategic Framework).
6. It is a consultation which seeks views on potential legislative arrangements that are needed to pursue a vision of a public service workforce set out in *the Strategic Framework* and has been identified by the Workforce Partnership Council (WPC) as necessary to bring about a step forward in our management of the public service workforce in Wales.
7. The WPC was created in 2006 as a cross sector all-Wales collaborative body to handle public service transformation and workforce change. Achieving effective strategic collaboration between public services is a key action outlined in the *Programme for Government*¹. As an outcome this should ensure that all available funding is used to support a stronger and more effective delivery of front line services. The WPC's agreed programme of work is set out at Annex A.

¹ Welsh Government, September 2011

8. The Welsh Government is committed to working with trade unions and employers through the WPC to limit the impact of the current financial challenges, providing the workforce with a Wales-wide voice so that innovation and creativity in the delivery of services can be harnessed and channelled in a strategic direction.

9. This paper seeks to set out proposals that have been requested by the WPC and should be read in context alongside *the Strategic Framework*.

10. Priorities for public services are set out in *Chapter 2* of the *2011 Programme for Government*. These priorities affirm the Welsh Government's strong commitment to protecting and supporting our public services set alongside our commitment to support and develop the public service workforce and the vision for citizen-centred public services for Wales.

11. As a Government we are committed to social partnership working to pool our talents and resources to meet the challenges we face head-on. Where possible we will seek progress by consent to ensure stakeholders jointly own the challenges and solutions which command majority support.

12. The Welsh Government believes that these issues will require legislation. The purpose of this Green Paper is to identify what future legislation for the public service workforce should include. The key proposals are:

- a. The ability by Welsh Ministers to issue statutory guidance on matters affecting the devolved public service workforce including a process to govern the adoption of agreements which arise out of the WPC and subsequent direction if required.
- b. A duty on devolved public service organisations to promote and apply partnership working as it affects workforce matters and to collaborate on workforce matters.
- c. A Two-Tier and TUPE (Transfer of Undertakings (Protection of Employment) Regulations) code for devolved public services organisations in Wales.

13. Further information on these proposals is set out in this Green Paper, together with details of how responses can be submitted to this consultation.

The Challenge

14. Our challenge is to maximise the capacity of the workforce to deliver world-class public services. Whether it is health and social services, children's schooling or the provision of recreational, environmental or planning services high-quality public services have rightly become the expectation of citizens throughout Wales. It is the Welsh public service workforce that must deliver against these expectations.

15. The workforce is our greatest asset which must be empowered to add the most value to our public services using all their skills in the interests of service delivery.

16. The Welsh Government's role is to provide a secure and flexible environment which supports workers and provides a framework for better working across the public service. In order to really develop excellent public services that are integrated and seamless at the point of use we need to break down the barriers that exist between services and organisations and develop a whole workforce approach which operates as part of a Wales-wide public service.

17. Our approach must value the commitment, dedication and skills of the workforce and provide the flexibility to match it to public service demands. Wales is a small country with big ambitions and traditional ways of working are not always the most efficient or deliver the best services. We must lead the way now and make positive changes to the way we work while we have the opportunity to frame how public services in Wales should look.

18. A UK financial climate of falling public expenditure in to Wales coupled with the need for greater collaboration as typified by the *Simpson Review*² makes these challenges more pressing. However with greater levels of workforce engagement, partnership, leadership and a cultural shift in the way we work we can improve the value and security of the public service workforce in Wales.

19. Improvement in public service delivery is inextricably linked to the transformation of workforce engagement and restructuring our employee relations process with a partnership approach between employers and trade unions.

20. Part of our commitment to unlock the potential of the workforce must be to retain the skills and talents of people that work in our public services despite increasing financial pressures. Increasing workforce mobility will be a key element of our ambition to meet changing service demands while providing security in our public service workforce.

² The Minister for Social Justice and Local Government commissioned Joe Simpson, from the Local Government Leadership Centre, to undertake a review following a study by the Society of Local Authority Chief Executives and his own discussions with front line workers and service providers. The subsequent report, '*Local, Regional, National: What services are best delivered where?*' was published in March 2011.

21. In order to make this step change happen over the next 24 months the Welsh Government will invest in partnership training and other support to drive the strategy forward, as well as bring forward legislative proposals.

QUESTIONS:

Are these the right priorities for a statutory framework to enact the provisions of the *Strategic Framework*?

Are there additional provisions within the *Strategic Framework* that would be better put on a statutory footing?

Proposals for legislation

22. It is anticipated that the Welsh Government will bring forward an Assembly Bill in 2013 relating to the public service workforce. This Green Paper outlines the policy proposals for inclusion in that Bill and seeks views on those proposals.

23. The three key proposals are:

- a. To provide Welsh Ministers with powers to issue statutory guidance on matters affecting the devolved public service workforce, including establishing a process to govern the adoption of agreements which arise out of the WPC and to give subsequent direction if required.
- b. To place a duty on devolved public service organisations to promote and apply partnership working as it affects workforce matters and to collaborate on workforce matters.
- c. To apply a code of practice covering “two-tier” and “TUPE ” workforce practice issues to devolved public service organisations in Wales and to require those organisations to have regard to such a Code.

These are examined in fuller detail below.

To provide Welsh Ministers with powers to issue statutory guidance on matters affecting the devolved public service workforce, including establishing a process to govern the adoption of agreements which arise out of the WPC and to give subsequent direction if required.

24. The WPC was created in 2006 as a cross sector all-Wales collaborative body to handle public service transformation and workforce change. The WPC has developed into a high level ministerial led body which generates agreements, policies and guidance for use by social partners and public service organisations.

25. The WPC must provide strong leadership and provide a clear sense of direction if it is to function effectively. At its core is the collective wish to be both collaborative and consensual, adopting a co-operative approach in all matters wherever this is possible.

26. Where it can clearly be demonstrated that adoption brings with it both capacity and capability issues, these will be considered sympathetically. We fully understand that best practice does not of itself always translate into every context; good practice might sometimes be a better destination.

27. Whilst the principle underpinning the WPC is collegial working, there will inevitably be occasions where the Welsh Government will have to take a decision to move policy forwards.

28. It is important that once a decision by the WPC has been taken Welsh Ministers can, where it is appropriate to do so, give them legislative force in an effective and an efficient way.

29. Giving these decisions statutory force takes forward the Welsh Government vision of a Wales-wide public service approach to workforce issues extinguishing the need to seek separate contracted agreements with each individual employer within the host of different organisations in Wales. This would substantially speed up the implementation of changes to workforce matters ensuring better correlation between the workforce and our response to changing public service demands making the most of our advantage as a small, clever country.

30. It is proposed that the legislative framework should provide Welsh Ministers the power to give statutory force to decisions around guidance and other decisions that arise out of the WPC.

QUESTIONS:

Do you agree that Welsh Ministers should have powers to give statutory force to decisions made by the Workforce Partnership Council? If not, why?

Does the ability of Welsh Ministers to issue Wales-wide statutory guidance help us meet our ambitions about workforce mobility and responsiveness to public service demands?

Should such statutory provisions issued by Welsh Ministers be limited to proposals endorsed by the Workforce Partnership Council?

Should the Workforce Partnership Council itself be put on a statutory basis?

To place a duty on devolved public service organisations to promote and apply partnership working as it affects workforce matters and to collaborate on workforce matters.

31. We recognise that much of transforming the public service workforce is as much about changing public service culture and behaviours.

32. *The Strategic Framework* outlines how the workforce is at the heart of enabling the Welsh Government's future vision for public services, and sets out the principles by which we will operate in relation to workforce matters. It is forward-looking and aspirational in the way it addresses the need for cultural change to transform service delivery. Both in leadership and employee relations we will continue to strengthen our partnership based approach. This includes working together on workforce mobility and the need to balance employment continuity with reform of how services are delivered.

33. The challenges ahead are significant but we are confident that our partnership approach offers the best chance of success. The WPC agreed work programme takes this forward.

34. The Simpson Review stated that the focus is on:

“...the need for change as more functions, or parts of services, are organised on a regional and national basis. However, we advocate that change should be through collaboration rather than reorganisation...It is in local communities where the connection with citizens can be most fully developed, where community leadership can be exercised and where the opportunities for service integration can be best grasped.”

35. The Simpson Review led to the signing of the “Compact for Change”³ between the Welsh Government and Welsh Local Government in December 2011; a significant agreement signalling a joint commitment to reform aimed at delivering improved and cost effective services to communities across Wales.

36. There has been an increasing awareness that for transformation to be successful the workforce issues need to be properly addressed through excellent leadership and change management. There is now a greater understanding of the importance of these issues supporting implementation of the Compact agreed between Welsh Government and Local Government.

37. If we are to truly develop an approach to public services which is rooted Wales-wide then better partnership working and greater collaboration will be a core element for delivering greater workforce mobility. Delivering this element of *the Strategic Framework* is crucial to ensure we can maximise the capacity of public services with declining resources while protecting jobs and retaining expertise.

38. Greater consistency of human resources systems and processes across different parts of the public service must enable broader public service workforce planning, mobility, management and development.

39. Similarly Welsh Government initiatives to protect jobs could be implemented across the public service within a more flexible timeframe. For example, the ability to implement ProAct, a training subsidy programme, across the private sector quickly and efficiently has helped over 10,000 people stay in work and provided workers with new skills throughout a difficult economic period.

40. The Welsh Government, Wales TUC and employers in different areas of the Welsh public service have been piloting public service training which promotes partnership working and encourages better, more co-operative leadership at an operational level. Extremely positive outcomes have been reported and depending of final results the Welsh Government will be looking to roll out the programme across the public service in Wales.

³ See <http://new.wales.gov.uk/topics/improvgservices/publications/compact/?lang=en>

41. Setting a partnership and collaborative approach on a statutory footing ensures its primacy with employers that the Welsh Government believes is necessary to transform workforce engagement. With many statutory functions competing for resources the Welsh Government believes changing our approach to workforce engagement must have equal status with other statutory functions of public service bodies if we are to transform the way we deliver public services in Wales.

QUESTIONS:

Should a duty be placed on public service organisations to collaborate on workforce matters?

Would such a duty to collaborate on workforce matters fully reflect our ambitions for a Welsh Public Service approach to the workforce in Wales?

Are there other ways to achieve greater partnership working, without the use of legislation?

To prepare and issue a statutory code of practice on the Two-Tier workforce and TUPE code for devolved public services organisations

42. It is proposed that the Bill will provide for a code of practice covering “two-tier” and “TUPE” workforce practice issues to be applied to devolved public service organisations in Wales, and to require those organisations to have regard to such a Code.

43. The *Code for Workforce Practice Matters* (commonly known as the Two Tier Workforce Code) was introduced by the UK Government in 2003; it required all local authorities in England and Wales to assume the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (known as the TUPE Regulations) in the service specification for all new contracts or re-tenders of contracts for services.

44. The Code also required local authorities to specify in tender contracts that employees subsequently hired by the successful contractors had to be provided with terms and conditions no less favourable overall to the transferred ex-public sector employees that they would work alongside. It also required authorities to ensure that contractors offered ‘reasonable pension arrangements’ to local government employees transferring to them and, under the Two Tier provisions, also to staff recruited at a later date.

45. A Welsh Code dealing with the matters was published in February 2008 as part of the work of the then Workforce Forum in support of the *Partnership and Managing Change Agreement*, this Welsh Code which better reflected the devolved public service landscape and within the context of the UK provisions.

46. In December 2010 the UK Government announced the withdrawal of the Code of Practice on Workforce Matters and shortly after that the Two-Tier Code for Local Government was withdrawn with immediate effect. The withdrawal of the Code

does not affect the existing TUPE Regulations. However in relation to the terms and conditions (including pay) of later new joiners to a local authority service outsourced to a private or third sector partner, there is no longer any statutory requirement on authorities to specify in contracts that they should have terms and conditions which are overall no less favourable to the local authority transferred staff.

47. The Welsh Government believes legislation is desired to place the Welsh Code on a statutory footing and to apply this to devolved public service organisations; ensuring values of fairness and equality throughout the Welsh public service and that everyone across Wales receives equal pay for equal work.

QUESTIONS:

**Do you agree that the Welsh Code should be placed on a statutory footing?
Please give reasons.**

Is the Code still fit for purpose?

Towards 2016

48. World class public services are at the core of the Welsh Government's ambition to make Wales a confident, prosperous, healthy nation which is fair to all and based on the principles of equality, fairness, social justice, human rights and sustainability.

49. This requires leaders who can clearly communicate and explain the vision and understand the cultural conditions that support and sustain high levels of engagement. Leaders must align the role of an organisation with the realities of the outside world and facilitate new ways to deliver the business, new career paths and embed pride in the Wales brand. Transforming the Welsh public service workplace to provide this sort of supportive environment will provide the conditions for a workforce that has the drive and energy to span boundaries and give of its best.

50. The issues of employee engagement, empowerment, motivation and high performance are interlinked and interdependent. As a Government, we are setting out the basis for an action plan to be improved continuously through experience of working together.

51. In future, the public services approach to personal development will be underpinned by a clearer link to behaviours – *it is not only about what we deliver, but how we deliver it*. Behavioural change is important when addressing internal challenges such as staff engagement, leading in times of uncertainty and managing organisational change, in addition to being vital for those in customer or citizen facing roles.

52. Part of our agenda for transforming employee relations includes progress towards a partnership model which includes employers sharing power through involving the workforce and their representatives in the running of their organisations - but this requires responsibility and leadership from all concerned. It is this culture shift we are attempting to facilitate.

QUESTIONS:

Do the statutory measures outlined add value to our ambition for the public service workforce in Wales as outlined in the Strategic Framework?

Are there any equality or regulatory impacts which arise from the proposals?

Annex A: Workforce Partnership Council Agreed Work Programme

Purpose

1. To advise the Partnership Council on the current and future work programme including matters for transfer from the *Efficiency and Innovation Programme*.

Action

2. The Council is invited to note and agree the work programme.

Background

3. With the review of the structure and Terms of Reference of the Council it has been necessary to refine and align the work programme with the challenges and opportunities of the day.
4. There are a number of reference points which have shaped the agenda including the Programme for Government, workforce implications of the shared service agenda and work which is already well in hand and previously agreed by the Council.

Current Position

4. The following matters are within the Partnership Council's work programme:
 1. Partnership Training
 2. Public Service Pensions
 3. Employee engagement
 4. Adapt and career transition
 5. Mobility Report
 6. Simpson and shared services
 7. Attendance management project
 8. Two Tier workforce
 9. Corporate Social Responsibility (CSR)

Recommendations

5. The Council is invited to note and agree the work programme. Additional items should also be sought.

Annex B – Consultation Response Form

Consultation Response Form

Your name:


Organisation (if applicable):

Email/telephone number:

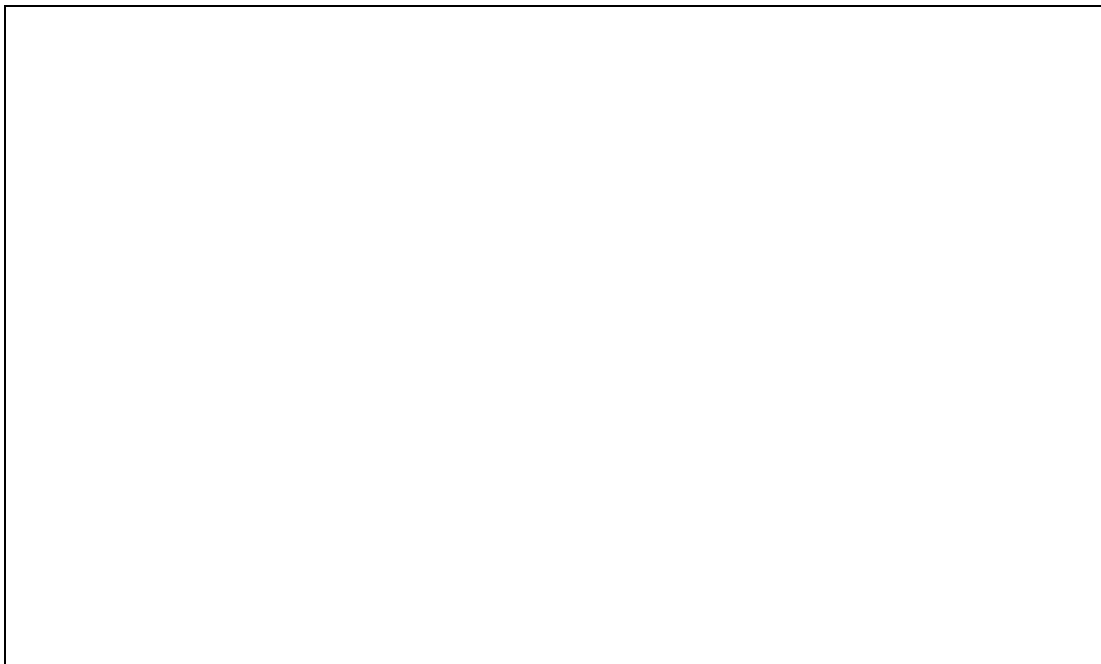
Your address:

QUESTION 1: Are these the right priorities for a statutory framework to enact the provisions of the *Strategic Framework*?

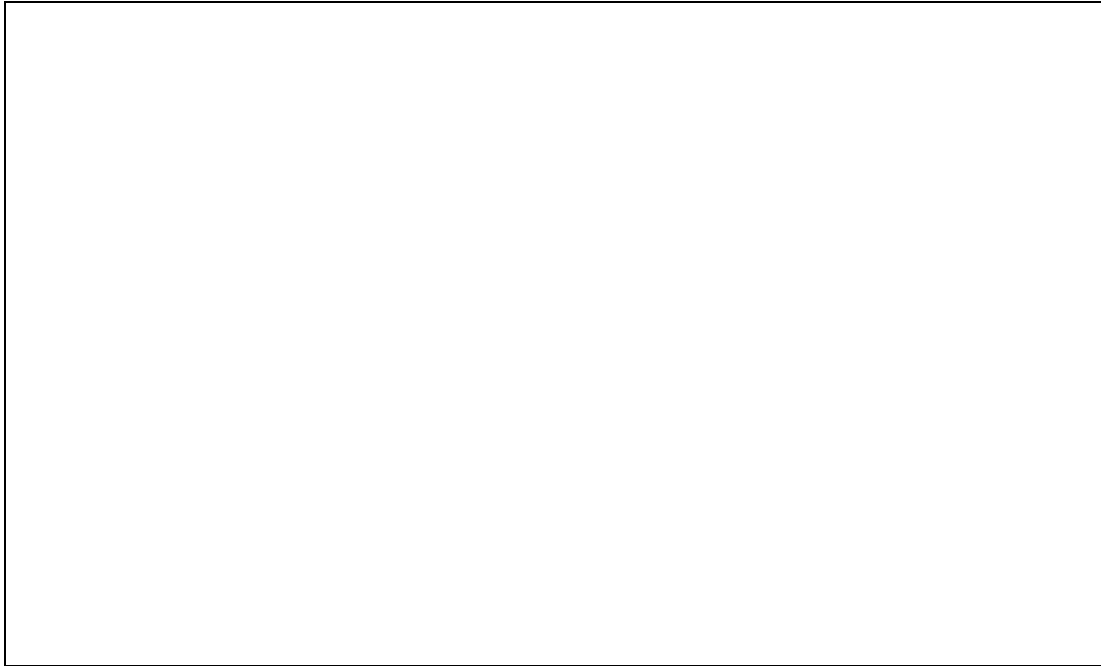
QUESTION 2: Are there additional provisions within the *Strategic Framework* that would be better put on a statutory footing?



QUESTION 3: Do you agree that Welsh Ministers should have powers to give statutory force to decisions made by the Workforce Partnership Council? If not, why?



QUESTION 4: Does the ability of Welsh Ministers to issue Wales-wide statutory guidance help us meet our ambitions about workforce mobility and responsiveness to public service demands?



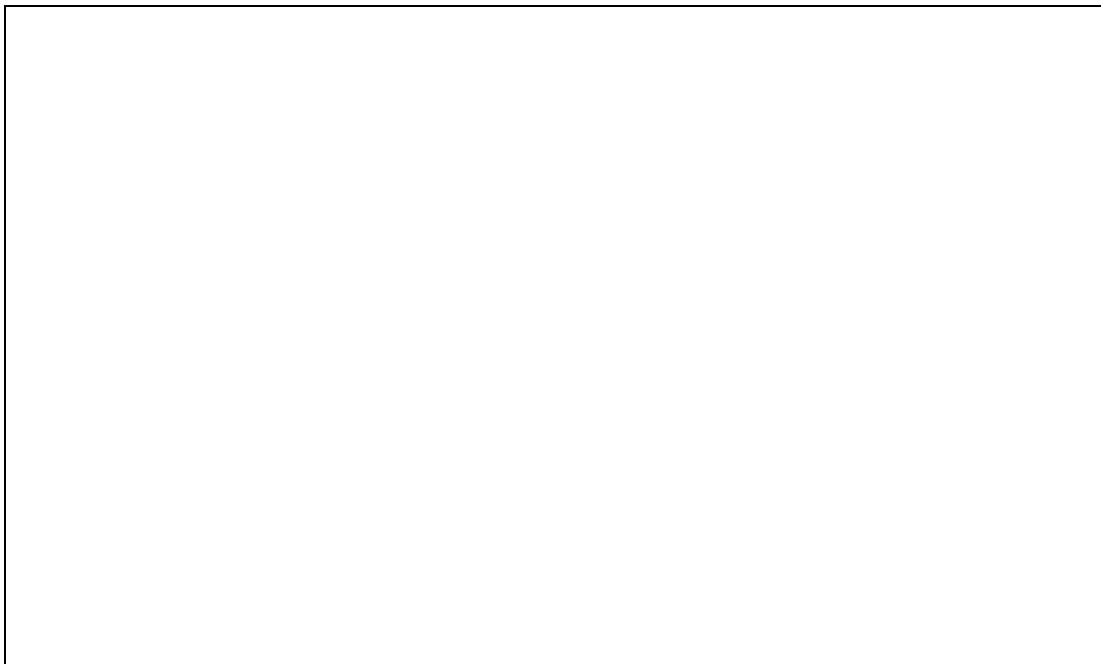
QUESTION 5: Should such statutory provisions issued by Welsh Ministers be limited to proposals endorsed by the Workforce Partnership Council?



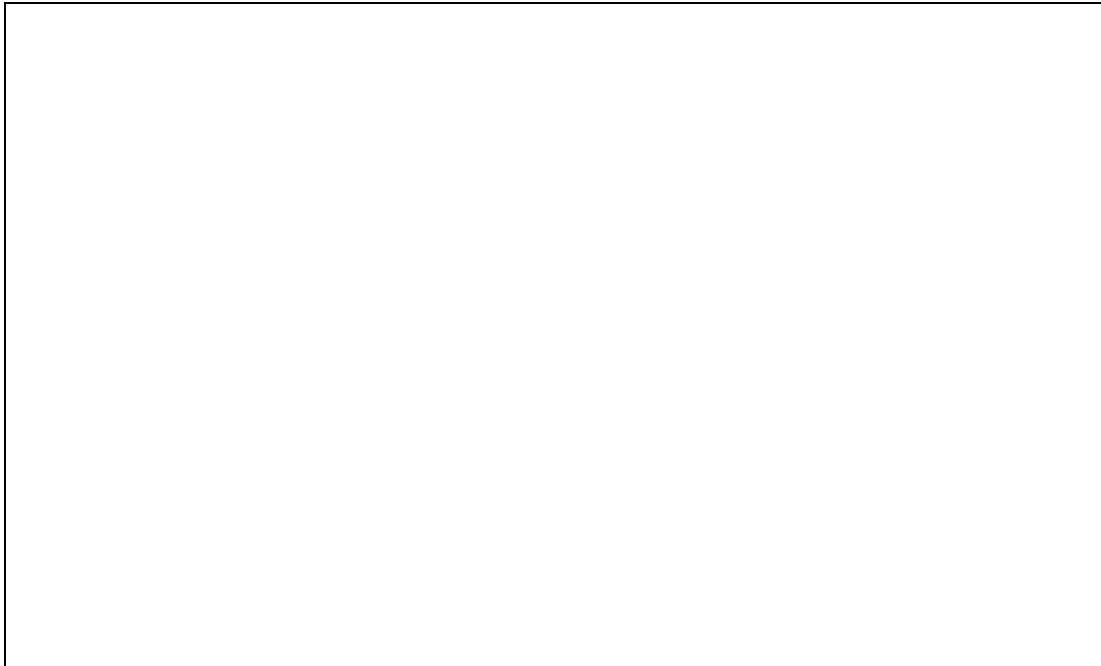
QUESTION 6: Should the Workforce Partnership Council itself be put on a statutory basis?



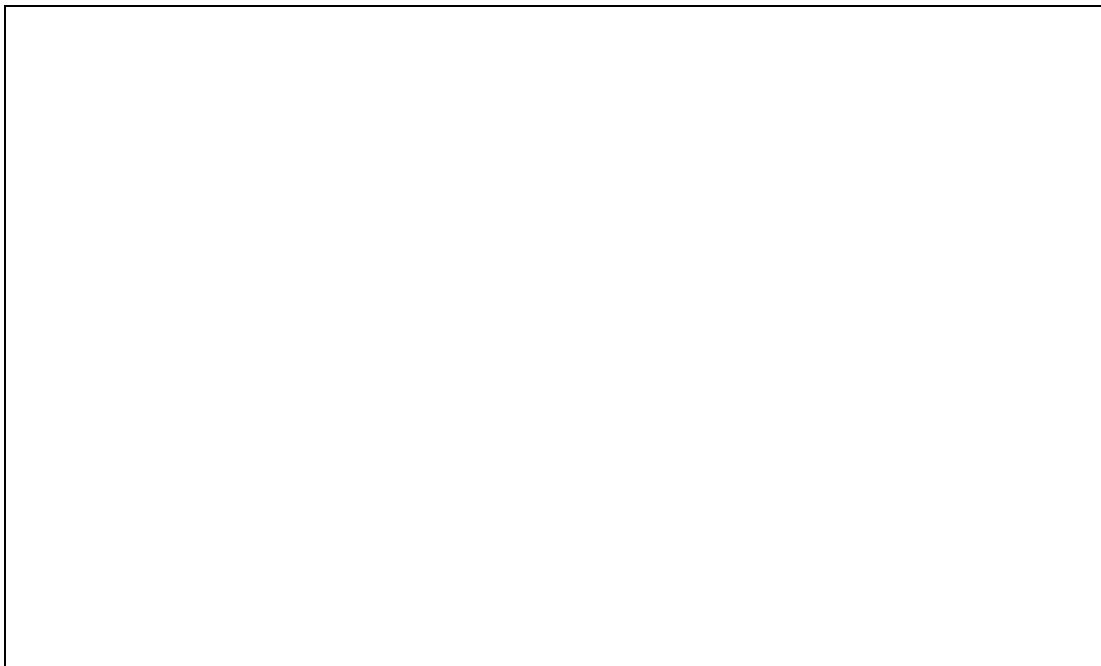
QUESTION 7: Should a duty be placed on public service organisations to collaborate on workforce matters?



QUESTION 8: Would such a duty to collaborate on workforce matters fully reflect our ambitions for a Welsh Public Service approach to the workforce in Wales?



QUESTION 9: Are there other ways to achieve greater partnership working, without the use of legislation?



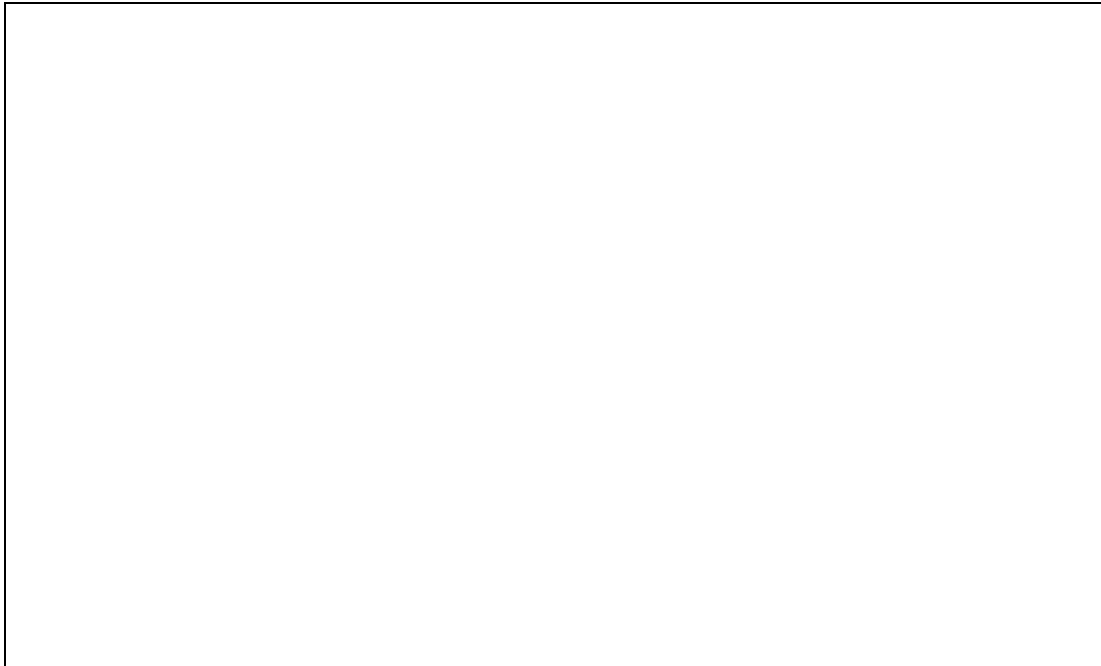
QUESTION 10: Do you agree that the Welsh Code should be placed on a statutory footing? Please give reasons.



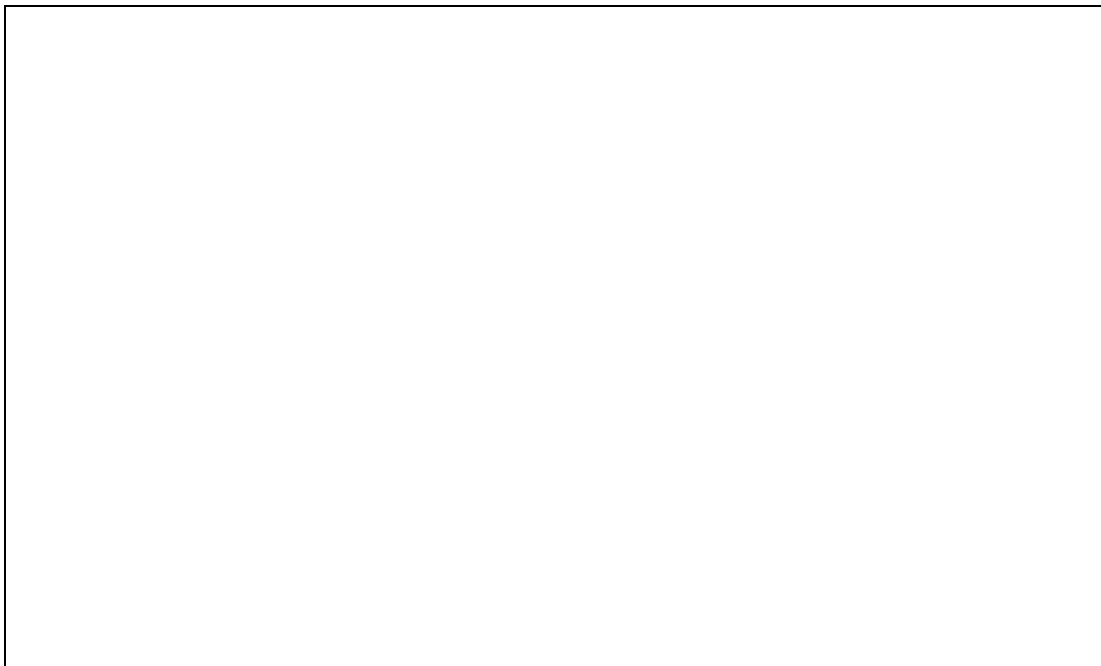
QUESTION 11: Is the Code still fit for purpose?



QUESTION 12: Do the statutory measures outlined add value to our ambition for the public service workforce in Wales as outlined in the Strategic Framework?



QUESTION 13: Are there any equality or regulatory impacts which arise from the proposals?



QUESTION 14: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please tick here