

## SPECIAL ISSUE ARTICLE OPEN ACCESS

# Pathways to Substate Variation in the UK's Employment Relations: The Case of the Welsh Government

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## ABSTRACT

The UK is often viewed as a centralised entity that has pursued neoliberal policies. Yet its political system features devolved parliaments whose governments deploy responsibilities including those linked to employment relations. This article explores the Welsh Government's role within employment relations to argue that it has shaped pathways to substate variation by (1) defining the procedural status of other actors through creating social partnership structures (2) deploying its role as employer, funder, and procurer to influence employer behaviour, and (3) making some statutory regulation. We conclude that the Welsh Government is part of an increasingly fragmented regulatory state within the UK that offers some opportunities for subnational actors to create divergences within its national system of employment relations.

## 1 | Introduction

The UK was once a unitary state featuring an almost unvariegated national Employment Relations (ER) system. Yet the creation of devolved parliaments and assemblies from the late 1990s birthed governing institutions whose responsibilities included those impacting ER. A Welsh Government formed from members of the Welsh Parliament controls over half of all public expenditure in Wales including that on health, education, local government, economic development, and many aspects of transport. Other components of public administration, however, such as welfare and defence are not devolved and remain the UK Government's responsibilities. The Welsh Parliament has primary law-making powers, but these do not encompass employment law. Meanwhile, the importance of the public sector in Wales is boosted by a relatively weak private sector. In the year ending 31 June 2024, 31.6 per cent of all employees in Wales were employed in the public sector compared to 24.0 per cent throughout the UK (Welsh Government 2024).

Hyman (2008) argued that national governments have many roles within ER beyond legislating employment rights. These include acting as an employer, defining the procedural status of other actors, and shaping the labour market through macro-economic, welfare and supply-side policies. Yet the ER literature, influenced by works delineating ER systems into national models (e.g.: Hall and Soskice 2001; Baccaro and Howell 2017) has tended to neglect how national systems can feature subnational variation. Although research on subnational variation exists, it mostly focuses on federal systems such as the US and Canada (e.g. Patmore 2009; Cobble and Merrill 2009; Belanger and Trudeau 2009). Less commonly considered are overall variations within nonfederal systems such as the UK. Nevertheless, researchers have examined individual ER topics in Wales such as social partnership in the NHS (Bacon and Samuel 2009) and minimum wage setting in agriculture (Goberman and Hauptmeier 2022). Such developments sit within what an examination of trade union territorial densities across the UK argued was 'patterned variation' in ER (Beynon et al. 2012). However, the literature lacks a full consideration of

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the occurrence of such ‘patterned’ ER in any of the UK’s constituent territories.

The article argues that Welsh Government activity has constructed three pathways to substate divergence in ER by (1) defining the procedural status of other actors through developing social partnership structures (2) deploying its status as an employer, funder, and procurer by means including embedding ‘fair work’ throughout its activities, supporting collective bargaining, and promoting employer adherence to voluntary regulation, and (3) statutorily regulating minimum wages in agriculture, trade union activities in the devolved public sector, and two-tier arrangements for contracted out public services.

We make two contributions. One is to move beyond the literature with its foci on specific ER topics within either one substate territory (Bacon and Samuel 2009; Beynon et al. 2012; Goberman and Hauptmeier 2023) or across all devolved territories (Heery et al. 2020; Goberman and Hauptmeier 2022). Instead, we focus on how a substate government has intervened across many ER topics to prompt divergence. The other applies Hyman (2008) definition of how national governments can influence ER to a devolved environment, extending his framework to identify how the Welsh Government is part of an increasingly fragmented regulatory state within the UK that enables subnational actors to create divergences within a broader national system of ER.

The remainder of this article is structured as follows. The next section examines the literature on substate variation within ER. We then outline our methods and data. Subsequent empirical sections set out the divergent outcomes, and how the Welsh Government developed pathways to such variation, before concluding.

## 2 | Substate Variation Within Employment Relations

Locke (1992) critiqued ER theory as being premised overly on different ‘national models’ and argued for a greater focus on substate variation. Yet the literature has continued to assume that national settings are paramount in shaping ER systems given the role of states as ‘midwives of institutional change’ (Baccaro and Howell 2011: 551). This assumption prompted Meardi (2012: 107) to argue that ER features ‘methodological nationalism’. Such ‘nationalism’ (Peck and Theodore 2007) is reflected by research drawing on typologies categorising national differences in political economy into a few types. The most prominent is ‘varieties of capitalism’ (Hall and Soskice 2001) and its assessment of institutional patterns and behaviours to identify Liberal and Co-ordinated Market Economies. Yet Piore (2016) challenged such typologies as oversimplifying governance practices as constructing ER regimes involves many combinations of market, associational and state-led governance.

Crouch (2005) sought to reconcile the identification of national ER systems with subnational variation through arguing that such variation does not contradict national typologies, as they focus on delineating the dominant model and not factors

driving divergence. The existence of divergence has prompted examinations but only within narrowly defined topics or features of subnational ER.

One research focus examines how non-state actors interact with such institutions to prompt variation. Almond et al. (2017) analysed relationships between multinational corporations and regional government to argue that the latter can join with employers’ organisations and unions to make choices about the extent to which elements of their business system follow ‘co-ordinated’ or ‘liberal’ patterns, while Morgan and Kristensen (2006) explored how conflicts within MNCs prompt subsidiaries to align their practices with local institutional contexts instead of their parent company. Katz and Darbishire (2000) used their ‘converging divergences’ approach to explore how multi-national corporations were operating to converge ER practices between their subsidiaries and suppliers across different countries. Such operations combined with pre-existing differences in work organisation and strategy to prompt subnational divergence. Finally, Medina and Molins (2014) argued that devolution was a primary determinant of employer collective mobilisation within Italy, Spain, and the UK as it incentivized new or existing territorial associations to assume policy functions given their need to act effectively within evolving institutional contexts.

Another focus was on the impacts of subnational political institutions. ER systems in the federally constituted US and Canada are influenced by tensions between governance levels (Patmore 2009) while their subnational institutions often possess significant responsibilities within ER. One example in the US was how union-led campaigns targeted state governments to prompt new collective bargaining systems for care assistants (Cobble and Merrill 2009). In Canada, researchers explored how federal systems interact with cultural differences to prompt differentiation. Federal and provincial institutions share jurisdiction over ER, but Francophone identity has driven a less ‘liberal’ approach in Quebec (Belanger and Trudeau 2009). Laroche (2022) explored employer interest representation within Quebec to argue that a political desire to bolster cultural identity prompted subnational institutions to develop a Francophone business class within an environment supportive of social partnership.

In the nonfederal UK, a continuing research focus on UK-wide institutions combines with the relative novelty of devolved governance to mean that research on their ER impact remains embryonic. Studies draw on how devolved governments’ role in shaping ER was enabled by their many responsibilities, even though they mostly lack jurisdiction over employment law. Researchers have often examined the softer forms of regulation identified by Deakin et al. (2012) as characterising much state policymaking over the labour market.

Such studies divide into two strands. The first examines specific ER topics in individual countries. In Wales and Scotland, Bacon and Samuel (2009: 238) explored social partnership in the NHS to observe the ‘emergence of an embryonic, yet politically distinctive, social democratic approach to industrial relations’ as devolved governments sought to re-evaluate and modify inherited national systems. Beynon et al. (2012) observed that

union density in Wales was higher than almost all other UK regions and nations. They argued that divergence was prompted by factors including spillovers from a historic dependence on un-ionised primary industries that featured turbulent ER, and an environment featuring high levels of public sector employment. Yet the continuing impacts of these factors were reinforced by how Welsh Governments had sought to enhance the workplace role of unions. Finally, Goberman and Hauptmeier (2023) set out how constitutional loopholes combined with political differences between the Welsh and UK Governments to enable the former to create a statutory body regulating agricultural minimum wages. In Scotland, Simms (2023) argued that policy divergence from England prompted a rebuilding of institutional mechanisms to support social dialogue, incentivising employers to participate within a partial rejuvenation of coordination.

The other and infrequently examined strand is comparative examinations of patterned ER across different territories. One example is Heery et al. (2020) exploration of factors driving subnational variations in employer take-up of the voluntary Real Living Wage. They argued that devolved governments used their status as employers, purchasers, funders, and ideologues to promote the Real Living Wage in line with their social democratic ideologies while the UK Government was less enthusiastic in England. This dynamic helped secure greater employer adoption of the Real Living Wage in Scotland and Wales. Another is Goberman and Hauptmeier's (2022) examination of employer collective action across devolved territories, arguing that the increased frequency of territorial employer organisations was prompted by employer reaction to the institutional environments created by devolution.

Overall, the factors creating pathways to subnational divergence in a devolved territory of the UK have yet to be explored. This absence points to a broader gap in the ER literature where the increasing spatial and political fragmentation of the UK state has yet to be recognised fully. Lucio and MacKenzie (2024) argued that 'much effort remains to be made in trying to map the continuing ways in which [...] the devolved governments [...] have attempted to pick up the repeatedly dropped regulatory baton.' This study seeks to fill this gap through describing Welsh Government activities within ER to outline how they form three pathways to substate variation.

### 3 | Methods and Data

Our methodology sought to obtain multiple perspectives on ER in Wales across two strands to generate a rounded description of its outcomes and dynamics. One was collecting documents such as explanatory memoranda to Welsh Parliament legislation, witness statements to Welsh Parliament Committees, guidance documents produced by the Welsh Government and other materials such as the findings of Commissions established by the Welsh Government to investigate topics and make recommendations. The other was semi-structured interviews that took place in 2023 and 2024 with 28 representatives of: the Welsh Government (former senior civil servants), employer organisations, unions, advisors to such bodies, and other organisations active within ER. Interviews sought to obtain

individual and organisational perspectives as to ER in Wales and to gain an understanding of the political, social, and economic dynamics shaping outcomes. All interviews were recorded and transcribed, although one was conducted via e-mail. All participants, their specific roles and organisational affiliations are anonymous as per the ethics approval granted by Cardiff University.

### 4 | Divergent Outcomes

In contrast to the UK Government's approach to ER the Welsh Government has created Social Partnership structures, embedded Fair Work into its activities, supported collective bargaining, and has exploited constitutional inconsistencies to expand its regulatory authority. One public sector union representative argued that 'the industrial environment is very different, it's much more supportive, less adversarial than we get at a UK level' (Interview 12).

A Wales wide Social Partnership Forum with statutory responsibilities to advise on duties applying to public sector activity commenced in 2024, building on an earlier body that had proved effective in mediating between public and private sector interests during the pandemic and influencing workplace regulation. Sectoral partnership bodies cover the largely private retail and care home industries while institutional partnership bodies are in place within much of the public sector. Importantly, employer representatives and unions have been able to combine Social Partnership participation with their other activities within ER, symbolised by public sector industrial action coinciding with political debates over a Welsh Government bill to formalise social partnership and public procurement.

In Wales, 31.6% of all employees worked within the public sector in the year ending June 2024. Some of these were employed by central government in non-devolved areas such as welfare and are not impacted by Welsh Government policy, but most were employed within devolved activities such as NHS, health, or education. Data on the proportion of public sector employees in Wales who work for devolved bodies are not available, but in Scotland around 90 per cent of all public sector employees work within devolved activities (Scottish Government 2024). Yet although NHS and other bodies lacking direct democratic mandates tend to be influenced directly by the Welsh Government with, for example, further education now featuring Wales-wide collective bargaining because of government pressure, other bodies such as local authorities often decide autonomously as to how they execute the government's ER policies.

Most of the remaining workforce is employed by businesses. Here, the extent to which divergent ER practice applies varies. The most impacted are those supplying goods and services to public bodies as around £8 billion is spent annually on public procurement in Wales. One example is the Welsh Government funding and mandating the Real Living Wage within the care sector, much of which is privately operated. Another is other suppliers who fall within social procurement duties outlined by the Welsh Government's Social Partnership and Public

Procurement Act. The Welsh Government has mandated some duties including those applying to large construction projects while others have been decided upon autonomously by public bodies within the framework set by the Act. No data are available currently on the total of employees impacted by social procurement duties. Finally, minimum wage floors within agriculture are governed by the Welsh Government's Agricultural Wages Panel that has been operating since 2016 (Gooberman and Hauptmeier 2023).

Other private sector employers are those lacking financial linkages to the Welsh Government, and a lack of leverage means that its policies can have limited impact on their operations. Meanwhile, the Welsh Government does not maintain its own labour inspectorate given its limited responsibilities and budgets, with ER in Wales monitored by fragmented inspectorate functions controlled by the UK Government. A survey commissioned by the Wales TUC, for example, indicated that some employers had not carried out Covid workplace health and safety risk assessments as mandated by the Welsh Government (Wales TUC 2021).

All this means that devolved public sector employers in Wales, and an increasing proportion of private sector employers, operate within an ER system that remains part of the UK's national system but features emerging divergences. We now set out the three pathways that have combined to enable such divergences.

## 5 | Defining the Procedural Status of Other Actors

The Welsh Government has prioritised social partnership to reinvigorate employer co-ordination, initially within the devolved public sector but more recently incorporating private sector representatives. Some of the earliest social partnership structures were within the NHS where the Welsh Partnership Forum assisted with the dismantling of the internal market as devolved governments were opposed to the marketization of public services (Bacon and Samuel 2017). The first structure to encompass the devolved public sector was the Workforce Partnership Council, established in 2007 to reach agreements between the social partners. One example of such agreements was a non-guaranteed hours agreement that addressed zero-hour contracts within the public sector by ensuring that devolved public sector employers would not use them unless supported by unions.

Subsequently, the impact of two crises boosted social partnership. One was the economic crisis of 2008–09 whose employment impacts prompted the Welsh Government to convene economic summits where it worked with unions and employer representatives, including those representing businesses, to devise financial support packages for businesses including wages subsidies to preserve employment. The other was Covid-19 when the Welsh Government created a Shadow Social Partnership Council to advise on its response. This council established itself as an influential body as the Welsh Government utilised its members' representative status to participate in decision making. A private sector employers' organisation

representative recalled that 'it took it off in a rather strange direction [...] we got involved in all sorts of things' including workplace health and safety (Interview 13). Meanwhile, a union representative argued that on 'a lot of the decisions made around the social distancing and the wearing of masks in particular, we were listened to' (Interview 18).

Meanwhile, a Fair Work Agenda emerged to impact Social Partnership. In 2017 the Welsh Government created a Fair Work Board from representatives of social partners and tasked it to set out a framework for achieving such work throughout the labour market. However, differences between unions and employer representatives as to the potential for collective bargaining prompted deadlock (Interview 2). In response, the Welsh Government created an independent body, the Fair Work Commission, to recommend actions that could embed fair work principles. One interviewee recalled that the Commission was 'definitely independent' from the Welsh Government as 'there was no pressure at all, or influence' (Interview 6).

The Commission defined fair work as 'where workers are fairly rewarded, heard and represented, secure and able to progress in a healthy, inclusive environment where rights are respected', identifying six characteristics of such work along with indicators. As well as this operational definition, the Commission also made 48 recommendations as to how the Welsh Government could promote Fair Work. One focus was procedural, setting out how institutional forms to sustain the concept could be created within the Welsh Government. The other was substantive, setting out how the government could use its powers to promote fair work. All recommendations were accepted by the Welsh Government.

The Welsh Government also created two sectoral Social Partnership structures. One was the Social Care Fair Work Forum, created in 2020 as recommended by the Fair Work Commission. It set out what it described as the 'clear moral case for improving terms and conditions in the sector' (Social Care Fair Work Forum 2023) but also warned of the difficulty in doing so given that care services involve over a thousand providers across public, private and third sectors. Although the Welsh Government is represented on the Forum given its role in funding social care, the chair is independent while one interviewee observed that 'what's interesting about the forum is [that] it sets an expectation' that the social partners will work jointly to achieve impact (Interview 3) prompted by sectoral dependence on Welsh Government funding and relatively high union density. The forum works through work streams including those on pay and progression, collective bargaining, and health and safety.

Two recent work streams demonstrate the Forum's actual and potential impact on ER. Actual impact was demonstrated by the Forum working to ensure that the Welsh Government's decision to fund and mandate the Real Living Wage for most care sector workers could be implemented; one interviewee (Interview 3) recalled that 'we spent about 9 months where the forum met every few weeks on the Real Living Wage [...] implementation was a massive task, given the complexity and fragmentation of the sector'. Potential impact was demonstrated



by how the Forum sought to develop shared understandings of co-ordinated approaches to pay and conditions that could evolve into new collective bargaining approaches. In 2023 it gained approval from its constituent partners for a draft pay and progression framework for the social care sector; work as to how this can be implemented collectively is ongoing.

The other sectoral forum is the Wales Retail Forum, established in 2020. This has been less impactful than the Social Care Fair Work Forum, reflecting how the retail sector does not depend on Welsh Government funding and features a relatively low union density. Such differing dynamics mean that the forum has restricted itself generally to statements of intent, most notably a Retail Action Plan of which the Welsh Government noted that there was ‘no new funding to support this Plan’ (Welsh Government 2023).

The devolved public sector is comprised of many separate organisations including those linked to health and social care, local government, transport, and economic development. Social partnership has been gradually spreading through many of these. All health boards, for example, possess such structures. The Welsh Government has meanwhile encouraged their creation within further education colleges – its Deputy Minister for Social Partnership Hannah Blythyn argued that ‘we have been working with the sector and joint trade unions [within further education] to embed the principles of social partnership on a voluntary basis’ (Welsh Parliament 2024). It funded pilot studies developing structures enabling employee representatives to be informed as to policy decisions, and given opportunities to challenge them. Further education colleges are funded directly by the Welsh Government, giving them leverage to ensure the gradual creation of partnership structures. However, the more autonomous nature of universities has meant that social partnership is far less developed within higher education. One interviewee argued that the Welsh Government’s approach to social partnership when dealing with some public sector employers was ‘exceptionally voluntarist’, meaning that the extent to which structures were established and then used often depended on the attitudes of individual managers (Interview 14).

The Welsh Government unified and set out its approach to Social Partnership within the 2023 Social Partnership and Public Procurement Act. The Act’s provisions divided into three categories. The first was procedural in that the act placed social partnership on a statutory footing to co-ordinate the different approaches then operating. It also amended the 2015 Wellbeing of Future Generations Act that set out seven ‘well-being goals’ for all public bodies were expected to strive towards; the amendment replaced a duty to secure ‘decent work’ with one for ‘fair work’.

The second was institutional in that it created a Social Partnership Council. It is a tripartite national cross-sector body chaired by the Welsh Government’s First Minister whose worker representatives are nominated by the Wales TUC. It is tasked with advising ministers as to how to work towards the ‘well-being goals’ and the new obligations on public bodies set out by the Social Partnership and Procurement Act. Both categories of activities combine to define how social partnership

should operate in a devolved context. The council met for the first time in 2024 as the apex of the partnership process and was described by one union representative as ‘almost like one big national conversation. And rather than the way it’s done [...] in England, it is an active live conversation that we have with government most days of the week’ (Interview 19).

The third category was placing new duties on existing institutions. The Welsh Government is now obliged to consult the Social Partnership Council when making decisions of a strategic nature, while all public bodies are required to seek ‘consensus or compromise’ with recognised unions, or other representatives in their absence, when developing plans to deliver on objectives relevant to the ‘well-being goals’. They are also required to jointly report annually on progress made in meeting these goals. Finally, most devolved public bodies are required to procure in a ‘socially responsible’ manner.

A frequent theme within interviews was how social partnership has helped prompt an operating culture very different to that applying in England. One union representative (Interview 7) recalled that the partnership approaches promoted by the Welsh Government were:

*All culturally such a shock to me when I came to work here. I had no idea about this way of working with government [...] big set-piece meetings involving lots of different types of representatives, as well as smaller informal arrangements [...] to inform ministers and government’s work.*

Meanwhile, the extent of private employer representatives’ involvement within social partnership prompted an employer representative (Interview 9) to argue that:

*It’s not just about setting the agenda in terms of what we want to plan the future, it’s about trying to [...] make sure that policy is implemented in a way that takes into account all the different parts, people around that table.*

Unions and employer representatives are now used to such structures and to the enhanced access and influence that they offer. A union representative stated that ‘we do work in a social partnership with the Welsh Government, we do meet with the [cabinet] Secretary and the trade unions every 6 weeks, and we do a lot of the work together.’ (Interview 22). There are, however, tensions where collective approaches to wage negotiations overlaps with social partnership structures, as disputes within the former such as those within the NHS can prompt a lack of faith in the effectiveness of the latter.

## 6 | Employer, Funder and Procurer

The Welsh Government has also promoted collective approaches to pay bargaining, as well as informal regulation of the employment relationship. There are no Wales-only private sector bargaining frameworks, but public sector bargaining has evolved in recent years across two patterns in response to devolution. One is where flexibility was inserted into England

and Wales approaches. Changes to NHS pay and conditions, for example, are subject to the findings of a pay review body that considers conditions across England, Wales, and Northern Ireland. Yet there are differences between Wales and England. The devolved responsibilities of the Welsh Government for health mean that it chooses whether to implement the findings of the pay review body and there is no role for the UK Government. Political autonomy prompts differing approaches. A recent dispute with the Royal College of Nurses, for example, was ended by the Welsh Government agreeing in negotiations to supplement its pay offer with concessions as to non-pay elements such as reducing expenditure on agency staff and enabling greater flexible working, the implementation details of which were to be agreed within NHS social partnership structures. Meanwhile, individual employers in the English NHS tend to influence their own terms and conditions but those in Wales are generally agreed nationally and apply to all employees.

The other is where separate arrangements have emerged. In 2014 the Welsh Government as the funding body for further education influenced employers and unions to create a national body to negotiate pay and conditions, the Wales National Committee Further Education Council. A bargaining agreement was implemented in 2016 to enable the negotiation of pay and conditions for lecturers, managers, and support staff. The process of divergence prompted the University and College Union in England to state that 'we look towards Wales with envy' (TES Magazine 2014). Recent agreements have included those on workload allocation and starting salaries for lecturers and business support staff, while the Council has also produced nonbinding guidance such as that on performance management. One interviewee noted how the Welsh Government was 'an active participant in a lot of this and frequently, if there's a problem [...] resolutions can be sought' (Interview 14).

Within procurement, the Social Partnership and Procurement Act requires most devolved public bodies to define how their procurement will help meet the 'well-being goals' and publish their procurement strategies. Most of these requirements are interpreted by procuring bodies, but the act imposes duties on those procuring outsourced services or construction projects worth more than £2 million. One sets out how the workforce (two-tier) code of practice is to be incorporated into model contracts for use within outsourcing contracts, while authorities procuring large construction projects are expected to include socially responsible clauses. As part of this duty, contracting authorities must ensure that these contract clauses are extended through supply chains. The Welsh Government will develop model contract clauses and although their usage will not be compulsory, authorities not using them will have to register and explain their decision.

The Welsh Government is particularly active in promoting the Real Living Wage. It and the Welsh Parliament were early adopters (Heery et al. 2020), and accepted the Fair Work Commission's recommendation as to how take-up could be improved. In 2023 Welsh First Minister Mark Drakeford paid 'tribute to those employers who have adopted the Real Living Wage [...] We will continue to work with employers, trade unions and others in the living wage movement to promote [its]

benefits' (Western Mail 2024). All universities, for example, became Real Living Wage employers after the Welsh Education Minister expressed disappointment in 2017 that only one university had adopted the standard and instructed the Higher Education Funding Council for Wales, 'to begin working with institutions to create a Living Wage sector, in line with the Welsh Government's Code of Practice on Ethical Employment in Supply Chains' (cited in Heery et al. 2020). Such pressure is part of a pattern of encouragement sharply at odds with the behaviour of the pre-2024 UK Government in England, while the Welsh Government has also mandated and funded the Real Living Wage within the care sector. Nevertheless, its adoption has been concentrated within the Welsh Government, universities and the care sector and has yet to spread fully throughout local government or the NHS.

The Welsh Government has also sought to extend the coverage of voluntary regulation through promoting employment charters. One is its Code of Practice on Ethical Employment in Supply Chains that emerged from its policies on preventing modern slavery. It covers issues including human rights abuses, blacklisting, false self-employment, and unfair use of zero hours contracts. The government expects all public sector organisations to adopt the code while other employers are encouraged to do so. The code also asks employers to consider paying the Real Living Wage to their employees and to encourage suppliers to do the same.

Importantly, UK-wide legal restrictions mean that public sector bodies may not mandate suppliers' use of the Real Living Wage when procuring. The Welsh Government instead advises that a question on such wages is included within a broader Fair Work section when procuring goods and services from industries where low pay is common; it stipulates that a 'failure to pay the Living Wage would not necessarily mean that a bidder did not satisfy an overall fair working practices assessment' (Welsh Government 2022). Cardiff Council's Socially Responsible Procurement Policy, for example, contains a focus on 'ethical employment' including a 'scored Fair Work Practices question' requiring information on bidders' policies regarding payment of the Real Living Wage.

All this means that although the Welsh Government has placed increasing emphasis on social value procurement and its use is an increasingly routine part of public sector activity, it is still a work in progress. A 2022 study on social value procurement commissioned by the Welsh Government drew from interviews with procurement specialists to argue that there was widespread 'confusion' as to the meaning of social value and how to put it into practice when procuring (Cwmpas 2022: 4), although the government has since established a National Procurement Centre. Some of the variability can be attributed to its differing degrees of influence over employers within the devolved public sector. One example is local government authorities given their separate democratic mandates; one interviewee remarked on Welsh Government attempts to influence local government procurement as 'they created some frameworks, some of them work, some of them don't. Some of the local authorities go off and do their own thing' (Interview 13). Such variety has prompted private sector employer organisations to call for tighter regulation of procurement processes to avoid the

administrative difficulties of dealing with multiple approaches. One such interviewee argued that businesses often supported greater regulatory force and consistency to help create a 'a sort of more level playing field' when bidding for contracts (Interview 16).

## 7 | Statutory Regulation

The Welsh Government has had two types of opportunities to statutorily regulate ER. One flows from its undisputed responsibilities. These are rare with the most prominent example being the two-tier workforce codes that mitigates disadvantages to public sector staff transferred to a private contractor by outsourcing, as well as those recruited by the contractor to work alongside those transferred. These statutory codes once mirrored their equivalents in England, but in 2010 and 2011 the UK Government removed the codes operating in England, replacing them with a document entitled 'Principles of Good Employment Practice' that were weaker than the codes they replaced and were to be implemented voluntarily. Yet the pre-existing codes in Wales that mirrored the previous approach taken in England remained applicable, before the Welsh Government replaced them in 2014 with a more unified and strengthened approach.

A second opportunity was once offered by constitutional uncertainties. Although Westminster's responsibility for employment law means that the Welsh Government has few statutory opportunities to influence ER, the devolution settlement once featured 'jagged edges' where the jurisdiction of both institutions overlapped or was not clearly defined, prompting what a former civil servant described as a series of 'big fights with [the] UK Government at ministerial level' (Interview 23).

One example was the reregulation of agricultural minimum wages. It was prompted by the UK Government's 2010 decision to abolish the Agricultural Wages Board, a bi-partite panel that set minimum hourly wages for agricultural workers in England and Wales (Gooberman and Hauptmeier 2023). It was the last survivor of the UK's wages councils that once set pay and conditions in industries where low union density precluded effective collective bargaining. The Welsh Government wanted to retain wage setting, prompting an intergovernmental dispute as to who could legislate on agricultural minimum wages as agriculture was devolved but employment law was not. The dispute was resolved by a Supreme Court judgement that enabled the Welsh Government to create a regulatory body. This was the Agricultural Advisory Panel for Wales, formed from representatives from unions and employer organisations, as well as independent members. The panel uses pendulum bargaining to agree wages floors for agricultural workers based on skills and experiences. It is the only regulatory body with statutory Wales-only ER responsibilities although it has yet to incorporate the Real Living Wage into its wage setting. Another example was in relation to Westminster's 2016 Trade Union Act that imposed restrictive duties on public sector employers including strike ballot thresholds and restrictions on subscriptions. In response, the Welsh Parliament passed the 2017 Wales Trade Union Act disapplying these provisions to devolved public sector employers.

Yet the constitutional uncertainties that enabled both developments were closed by the 2017 Wales Act that introduced the reserved powers model, under which the Welsh Parliament could make laws only on matters not reserved explicitly to the UK Parliament. The Agricultural Advisory Panel for Wales, however, remains in place and although the Conservative UK Government promised to reverse the Wales Trade Union Act, it did not do so before the 2024 general election that resulted in a UK Labour Government committed to repeal the 2016 Trade Union Act.

## 8 | Conclusion

This article substantiates the existence of what Beynon et al. (2012) called 'patterned variation' within subnational ER prompted by Welsh Government activities. These activities encompass (1) defining the procedural status of other actors, mainly through its progressive development and promotion of social partnership approaches (2) acting as an employer, funder and procurer, such as mandating a new collective bargaining structure within FE and embedding Fair Work principles throughout the devolved public sector including within procurement practice, and (3) statutory regulation such as that relating to union activity and agricultural minimum wages.

Although the Welsh Government's responsibilities and enforcement abilities within ER are limited (Wales TUC 2024), it influences ER through deploying its pathways to enable significant subnational divergence, often prompted by political friction between Labour led Welsh Governments and Conservative led UK Governments. Researchers (e.g. Ferner 1988) once observed that state-owned businesses were subject to political intervention that shaped ER in a manner not experienced by their private sector counterparts. The Welsh Government has taken advantage of this dynamic and while its influence is currently confined largely to the public sector, such employment accounts for almost a third of all employees. Meanwhile, businesses supplying devolved public bodies are increasingly subject to the regulatory impulses of the Welsh Government within ER, while employer organisations representing businesses operate in social partnership in a manner that is not generally available to their counterparts in England.

We move beyond previous literature on subnational divergence in two ways. One is empirical as our exploration of the Welsh Government's creation and use of pathways moves beyond the literature with its foci on specific ER topics within either one subnational territory (Bacon and Samuel 2017; Beynon et al. 2012; Gooberman and Hauptmeier 2023) or across all devolved territories (Heery et al. 2020; Gooberman and Hauptmeier 2022). The other is theoretical. We apply Hyman (2008) definition of how national governments can influence ER to a devolved environment, extending his framework to identify how the Welsh Government's varied activities with ER forms part of an increasingly fragmented regulatory state within the UK that offers subnational actors opportunities to create divergence within a broader national system.

The article illustrates how the UK's changing and fragmenting political architecture has enabled subnational institutions to



alter aspects of inherited ER systems within the larger national system. The UK is currently a highly unstable political entity, and this instability has created both opportunities for, and threats to, the role of devolved institutions within ER.

## Conflicts of Interest

The authors declare no conflicts of interest.

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