

## What is the current policy/legal framework?

In 2005 the previous Labour government introduced the “Code of Practice on Workforce Matters in Public Sector Service Contracts” also known as the “two-tier Code”. The primary objective of the two-tier Code was to ensure fair and equitable employment conditions between public sector staff who had been transferred under TUPE and private sector employees working on the same outsourced public sector service contracts.

The two-tier Code was withdrawn in 2010 by the Conservative and Liberal Democrat coalition government and replaced with watered down “Principles of Good Employment Practice” which could be applied on a voluntary basis.

The current government’s Make Work Pay agenda included a commitment to reinstate and strengthen the two-tier Code.

## Policy Intent

The provisions in the Employment Rights Bill will empower Ministers of the Crown, Scottish and Welsh Ministers to reinstate and strengthen the two-tier Code through both regulations and a statutory code of practice that will apply to procurements where transferred public sector staff and private sector employees will be working alongside each other to deliver an outsourced public sector services contract.

Reinstating the two-tier Code will prevent the emergence of a two-tier workforce, where private sector employees working on an outsourced public sector service contract have worse terms and conditions than those employees who were transferred to work on it from the public sector. The reinstated two-tier Code will protect the rights of employees engaged on outsourced public sector service contracts and maintain the quality of public service delivery by ensuring consistent employment standards.

The provisions to reinstate the two-tier code support the “Make Work Pay” agenda and also contribute to one of the Government’s five missions; kickstarting economic growth.

## How will it work?

The Employment Rights Bill will empower Ministers of the Crown, Scottish and Welsh Ministers to make regulations specifying provisions to be included in relevant outsourcing contracts, for the purposes of ensuring specified workers are treated no less favourably than their counterparts working on the same contract.

This power can be used, amongst other things, to set out model contract terms and the circumstances in which they should be applied. It will be possible to specify provision tailored to certain types of contract, for example identifying target sectors or provision applicable to contracts of different values and similarly, providing for exemptions where appropriate. Contracting authorities must “take all reasonable steps” to include within relevant outsourcing contracts, any provisions specified in those regulations.

Alongside the regulation making power, there will be a duty for Ministers to publish a code of practice addressing the same matters, to which contracting authorities will have to “have regard”.

## Common questions

*What is a two-tier workforce?*

A two-tier workforce is one in which employees performing the same tasks are treated differently by employers, in respect of their employment terms and conditions. This can lead to low morale among some employees, which may lead to a high turnover of staff and affect the quality of delivery on public service contracts.

*How will the proposed code differ from the 'Two-Tier Code' introduced by the previous Labour Government?*

This provision in the Employment Rights Bill, gives Ministers of the Crown, Scottish and Welsh Ministers the power to make both regulations and publish a code of practice; this will give these measures a legal footing compared to the previous code, which was non-statutory for Central Government departments.

The regulations will allow Ministers to, for example, set out model contract clauses, which (unless exempt) contracting authorities must take all reasonable steps to include in their outsourcing contracts and ensure the implementation of. Where included in a contract, they can then be enforced against a supplier who does not implement the measures they have signed up to when entering into the contract.

Additionally, the new code will give the government the opportunity to update the 2005 code to align with the development of the UK's international trade obligations and to reflect domestic employment laws which have evolved since 2010.