



Draft Social Partnership and Public Procurement (Wales) Bill consultation

BRIEFING PAPER

INTRODUCTION

What the draft Social Partnership and Public Procurement (Wales) Bill is and why it is important for the sector

[Read the full text of the Bill.](#)

[Read the Consultation Document.](#)

In 2019, Welsh Government consulted on how to strengthen social partnership in Wales, with the aim of implementing the recommendations of the Fair Work Commission to ensure ‘an inclusive economy in which everyone can thrive and no-one is left behind’. WCVA’s response to this initial consultation is [here](#).

This new Bill seeks opinion on how to use legislation to implement the recommendations; sets out provisions to establish a system of fair work objectives to ensure a consistent approach to good, safe employment; sets out measures to ensure public procurement is undertaken with consideration to social, economic, environmental and cultural well-being; and sets out socially responsible procurement objectives.

This matters to the voluntary sector in Wales for multiple reasons:

- The sector, as providers of public services across the country, has a huge stake in how these services are procured – particularly as we work towards a recovery from the pandemic.

- The sector employs approximately 100,000 people* in Wales so must have a say in how the Fair Work Commission recommendations are implemented.
- Over 1,100 sector organisations are engaged in training and education*, much of which helps people find their way into employment.
- The sector is to be represented on the Social Partnership Council (Currently, Ruth Marks, WCVA Chief Executive, sits on the Shadow Social Partnership Council), but one seat may potentially not be sufficient representation.

The consultation document is split into categories. Below are key points from each category, along with the consultation questions relating to each one.

We would like your views on this consultation for potential inclusion in our response. Please take a look below, plus at the documents linked to above, and let us know your thoughts about as many or as few questions as you like. Feel free also to send thoughts about the Bill that may not directly be in response to the set questions.

Please email your thoughts to David Cook, WCVA Policy Officer, on dcook@wcva.cymru by 8 April 2022.

*Stats from the [Third Sector Data Hub](#)

WHY THE BILL IS REQUIRED

The consultation document highlights challenges to a ‘strong, resilient and diverse’ economy, including deindustrialisation; unstable and insecure employment; in-work poverty and economic inactivity. Many of these have been exacerbated by COVID-19.

The Bill is part of an effort to ensure ‘a shared agenda and a focus for engagement and activity’, ensuring that workers delivering public services can ‘work in fair, safe, healthy and inclusive environments, receiving fair reward, having their rights respected’.

Social partnership has been important during the pandemic, for instance in bringing civil society together to respond ‘collectively and collaboratively’. The Bill aims to build on this with a ‘greater consistency of approach’ and ‘a clear, strategic vision that unites and connects all levels of social partnership’.

The Bill also aims to provide greater clarity in procurement processes, including how public bodies can address competing priorities.

Question 1: Do you agree with the reasons set out regarding the need for the Bill? Do you have any comments concerning the case for change?

SOCIAL PARTNERSHIP

The Bill sets out a social partnership duty on bodies listed in Section 6 of the Future Generations Act to consult with trade unions in carrying out sustainable development when setting well-being objectives and when making strategic decisions about how to meet these objectives. This aims to improve public services and enhance wellbeing.

Consultation should adhere to a set of principles – cooperation, respect, trust, voice and participation, and mutual gains.

Public bodies will be expected to report annually on the operation of their social partnership arrangements.

Question 2: What is your view on the social partnership duty set out in the draft Bill?

Question 3: What is your view on the social partnership principles listed and defined in the table in this section?

Question 4: What is your view on the list of bodies that are subject to the social partnership duty in the draft Bill? Should the list of bodies be wider than those subject to the well-being duty in the Well-being of Future Generations (Wales) Act 2015?

FAIR WORK

Ministers will have a duty to set fair work objectives in consultation with the Social Partnership Council. Fair Work is defined as ‘where workers are fairly rewarded, heard and represented, secure and able to progress in a healthy, inclusive environment where rights are respected.

The devolution settlement places limits on what can be legislated on in this area.

Question 5: What is your view on the proposed duties on Welsh Ministers concerning fair work objectives?

Question 6: What is your view on key challenges and priority areas for pursuing and promoting fair work?

Question 7: Do you have a view on how to frame a legal definition of fair work which meets the limits of our legislative competence and progresses our ambitions for a ‘Fair Work Wales’?

Question 8: In addition to what is set out in the draft Bill, what other levers could be used by Welsh Ministers to promote and achieve fair work?

SOCIALLY RESPONSIBLE PUBLIC PROCUREMENT

This section of the Bill aims to support bodies to ensure wellbeing and fair work are central considerations in procurement; simplify policy expectations on procurement departments; improve the link between procurement processes and delivery of outcomes; improve transparency, and hold organisations to account for ensuring contract conditions supporting socially responsible practices are maintained throughout supply chains.

There is an overarching duty on contracting authorities to seek to improve the social, economic, environmental and cultural wellbeing of their areas by carrying out public procurement in a socially responsible way. Authorities must also publish objectives designed to achieve the socially responsible procurement goals.

Two separate contract management duties are included to strengthen the link between procurement requirements and due diligence.

[A diagram](#) representing the procurement cycle and actions to fulfil the socially responsible procurement and contract management duties is on p36 of the consultation document.

Question 9: What are your overall views concerning the provisions and thresholds set out regarding the socially responsible procurement duties, including the categories listed within the social public works clauses?

Question 10: What is your view on other potential measures outside of those outlined that could be taken in pursuit of ensuring socially responsible public procurement?

Question 11: What is your view on the table of contracting authorities above concerning the socially responsible procurement and social public workforce (Two-tier Code) duties?

Question 12: Should the current list of contracting authorities included within the Twotier Workforce Code be retained or should this be brought in line with the rest of the procurement duties? Should any additional changes be made to the way in which the Code operates?

Question 13: How can greater due diligence be achieved in construction supply chain management whilst keeping costs to a minimum, especially for smaller contractors in supply chains?

Question 14: What are your views on a potential future expansion of the contract management duty regarding the application, maintenance and monitoring through the supply chain of socially-responsible clauses to other sectors beyond construction (for example, social care)?

SOCIAL PARTNERSHIP COUNCIL

The Social Partnership Council will be a forum chaired by the First Minister to connect the social partnership, fair work and socially responsible procurement provisions of the Bill. It will:

- Provide leadership and promote consistency in the Welsh system of social partnership.
- provide a formal channel through which employers and trade unions can engage with Welsh Ministers.
- provide oversight of the progress achieved as a result of the introduction of the social partnership, socially responsible procurement and fair work duties.
- Provide advice, support and guidance to the social partners represented on the SPC.
- Support employer and trade union social partners to work together to improve public service delivery and economic and social well-being.
- Reach consensus voluntary agreements between social partners in pursuance of matters within the SPC's remit.

A Shadow Social Partnership Council is already in operation. The voluntary sector is represented on this by Ruth Marks, Chief Executive of WCVA. It meets fortnightly.

The membership of the full Council would see nine representatives from Welsh Government, nine representatives from trade unions, and nine representatives from employers – just one of these employer representatives will be from the voluntary sector. Each trade union and employer appointment will be made by the First Minister and each appointment to the Council will last three years.

Question 15: What is your view on the provisions set out in the draft Bill concerning: a. Membership of the Social Partnership Council? b. The proposed nomination process?

Question 16: What is your view on the proposals concerning the establishment and operations of the Social Partnership Council and its subgroups?

Question 17: What is your view on the outlined social partnership system in Wales, including the system leadership role of the Social Partnership Council and the links between different levels of social partnership?

SUPPORTING IMPROVEMENT AND SECURING COMPLIANCE

Compliance is intended to be achieved via 'self policing' - transparency and scrutiny will be the main drivers for ensuring compliance. But Ministers are considering developing an improvement and compliance mechanism which will allow bodies to receive advice, guidance and support in meeting their obligations. This will form part of a range of proportionate actions leading to achieving compliance. Where bodies are still failing to meet their obligations then there should be proportionate intervention.

The previous consultation saw mixed responses regarding financial penalties. They can be difficult to operate and inadvertently lead to a loss of funds for public services.

Question 18: Concerning the social partnership duty, should an improvement and compliance mechanism be developed to ensure that all bodies meet their duties and make a

collective contribution to the delivery of the proposed outcomes? If yes, do you have any suggestions as to how this might work in practice?

Question 19: Should there be an adjudication mechanism at national Social Partnership Council level for the escalation of any failure to agree at sector level? If yes, do you have any suggestions as to how this might work in practice?

Question 20: What are your views on the enforcement and compliance measures proposed in the draft Bill concerning socially responsible procurement and contract management? What other measures could be applied? Do you have any suggestions as to how any additional enforcement and compliance measures might work in practice?

Question 21: Do you agree with the impacts that are outlined in this section? Are there potential unintended consequences on certain groups that should be considered?

Question 22: Concerning the Regulatory Impact Assessment, do you agree with the assessment of the likely costs and benefits associated with the provisions in the draft Bill? If not, please explain which specific element(s) you disagree with and why.

Question 23: Do you have any additional or alternative evidence which could help to inform the final Regulatory Impact Assessment?

EQUALITIES AND IMPACTS

Aligned to the draft Bill, the Socio-economic Duty requires bodies to ensure due regard to the need to reduce inequalities of outcome that result from socio-economic disadvantage. This Duty, with the Bill, forms a framework to build on steps already taken to address inequality.

Question 24: We would like to know your views on the effects that the proposals set out in the draft Bill would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 25: Please also explain how you believe the proposed policy in the draft Bill could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favorably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favorably than the English language.

Question 26: 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.

David Cook

Policy Officer

WCVA

March 2021