

## Consultation Response Form

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Organisation (if applicable): Wales Council for Voluntary Action

Is this a collective response on behalf of your organisation / group of organisations (please specify): On behalf of WCVA

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Question	Response
Why the Bill is required	
<p><b>Question 1:</b> Do you agree with the reasons set out regarding the need for the Bill? Do you have any comments concerning the case for change?</p>	<p>On the case for change: the COVID-19 pandemic has led to much insecurity across Wales in a number of areas, including employment. WCVA believes it is essential to 'build back better' – to aspire to better than what we had pre-pandemic. From this viewpoint, we would support the Bill's aim to ensure that 'workers delivering public services can work in fair, safe, healthy and inclusive environments, receiving fair reward and having their rights respected'. However, there is much work to do to achieve this. Learning should be taken from the best of the sector's partnership working during the pandemic, ensuring communities and individuals have been able to continue accessing the services they need, and applied to what is built as we try to leave COVID-19 behind us. WCVA will be happy to provide examples of good practice that have taken place if requested.</p> <p>Indeed, the recent crisis has shown how important a range of factors are to well-being, not only those around fair work.</p> <p>We would appreciate more clarity as to why Welsh Government feels the Social Partnership Council should be a statutory body, when the already</p>

	existing Shadow Social Partnership Council is not and has been advising Welsh Government for some time now.
Key provisions of the draft Bill: Social partnership	
<b>Question 2:</b> What is your view on the social partnership duty set out in the draft Bill?	WCVA believes that, if this legislation is enacted, then local authorities should certainly consult with trade unions in setting well-being objectives and steps to take to achieve them. However, any such consultative work should be extended beyond trade unions and certainly include both the voluntary sector and citizens. Consulting only with trade unions will mean a majority of voices go potentially unheard.
<b>Question 3:</b> What is your view on the social partnership principles listed and defined in the table in this section?	<p>We would like to see a firm commitment to coproduction set out as part of the 'voice and participation' principle. We also suggest that principles around 'sustainability of services' and 'the green recovery' should be included. It's vital that services are sustainable and that they do not have a negative impact on the environment. This would also bring the principles further into line with the ongoing work on the Foundational Economy.</p> <p>However, much of the content of the principles as set out is already implicit within the five ways of working under the Future Generations Act. This Duty may detract from, or lead to duplication of, work already taking place in this area. There is no requirement to report on the five ways of working. Given the wider remit of, and legislative primacy of, the Well-being of Future Generations Act, this disconnect needs addressing.</p>
<b>Question 4:</b> 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?	The Social Partnership Council itself should be added to the Future Generations Act. Other than that, we are happy for the bodies to reflect those listed in the Future Generations Act; however, the bodies listed in that Act should be reviewed periodically.
Key provisions of the draft Bill: Fair work	

<p><b>Question 5:</b> What is your view on the proposed duties on Welsh Ministers concerning fair work objectives?</p>	<p>We would like to see the objectives Ministers can work towards in this area more explicitly set out, with regular intervals for the Senedd to review them, rather than simply a list of areas ‘they could’ choose to pursue of their own volition. This would make this area of the Bill more transparent.</p>
<p><b>Question 6:</b> What is your view on key challenges and priority areas for pursuing and promoting fair work?</p>	<p>The priority must be providing opportunities for fair work to those who have been most disproportionately impacted by the pandemic, including many BAME people, older people, and people with disabilities. To help achieve this, Welsh Government should support the development of community and voluntary sector-led employability programmes, building on current provision that already exists. This would also include removing the barriers which prevent some groups from volunteering. It should also support a Shared Prosperity Fund which provides an opportunity for communities and their support agencies to help drive change in job creation and community development, as well as supporting education, volunteering, and equality.</p> <p>Welsh Government should also further invest in and support social enterprises to help create local jobs for people and ensure the creation of local supply chains.</p> <p>Finally, it must also ensure that we support those furthest from the labour market back into work. This can involve a wider range of techniques than for people who are closest to being back in work, and can rely more on volunteering and voluntary sector organisations.</p>
<p><b>Question 7:</b> 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’?</p>	<p>Any definition of fair work should refer to the real Living Wage and to ‘Living Hours’ (e.g fair notice of shift work, guaranteed minimum hours, accurate contracts, etc) and these should be embedded in contract requirements. Welsh Government is a Living Wage employer and has a duty of</p>

	<p>care to ensure that this is passed down the supply chain, whether that be through direct or third party grants, or procurement.</p> <p>Cynnal Cymru (of which WCVA is the parent organisation) is the real Living Wage accreditation body for Wales. Cynnal works with Wales based employers from all sectors to support them with understanding the accreditation process, as well as the positive benefits and impact of accreditation for workers, employers and the economy. Cynnal Cymru also collaborates with government, trade unions and other private and voluntary sector organisations at national and local level to increase the number of workers being paid the real Living Wage through initiatives such as Living Wage Places and through strategic and advocacy work, for example in relation to a real living wage for care workers.</p> <p>The real Living Wage should be seen as the foundation of a Fair Work definition through which the other dimensions are built around.</p>
<p><b>Question 8:</b> 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?</p>	<p>The current cycle of one-year funding commitments means that organisations funded by public sector grants face major challenges in providing secure employment for members of staff. This lack of security is fundamentally unfair. To effectively deliver secure work in the voluntary sector, and therefore a more prosperous and healthy Wales, the cycles and limitations of one-year budgets need fundamental review. Charities must have the opportunity to ring-fence funds within their accounts and carry over monies to be spent over different financial years. The charity accounting standards require robust audit trails that are clear and transparent and available to be reviewed by any funder. The Funding and Compliance Sub-Committee as part of the Third Sector Scheme, and the Grants Centre</p>

	of Excellence within Welsh Government would be able to advise on this.
<b>Key provisions of the draft Bill: Socially responsible public procurement</b>	
<b>Question 9:</b> 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?	The current procurement threshold is just under £123,000 of what would sit within the Duty. Depending on the length of contract – say three years – this is low and tenders that the voluntary sector might go for would fall within the Duty. It would be worth Welsh Government considering the implications of contract value against contract length.
<b>Question 10:</b> What is your view on other potential measures outside of those outlined that could be taken in pursuit of ensuring socially responsible public procurement?	<p>Bodies will be asked to produce a procurement strategy, based on statutory guidance from Welsh Government. However, there is no indication in the consultation documents that community benefits will necessarily form part of the requirements for said strategies. It is critical that bodies are required to consider community benefit and social value within these strategies. It is essential that the voluntary sector, as likely service partners, is involved in the development of these procurement strategies.</p> <p>Measures should be taken to ensure that all workers on supply chains receive the Living Wage.</p> <p>Bodies should be required to consider the Welsh Government-endorsed <u>National Principles for Public Engagement in Wales</u> as they develop their strategies.</p>
<b>Question 11:</b> What is your view on the table of contracting authorities above concerning the socially responsible procurement and social public workforce (Two-tier Code) duties?	It is unclear why this only applies to certain public bodies. The rationale is not clear on this.
<b>Question 12:</b> Should the current list of contracting authorities included within the Two-tier Workforce Code be retained or should this be brought in line	The specifics of this code are unclear. Further, more detailed information is required on this.

<p>with the rest of the procurement duties? Should any additional changes be made to the way in which the Code operates?</p>	
<p><b>Question 13:</b> 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?</p>	<p>Effective supply chain mapping and contract management should assist here, as well establishing suitable monitoring across supply chain tiers through face to face/virtual meetings, SLAs, KPIs, targets and other tried and tested methods. It is important to ensure the burden of increased costs does not pass on to third sector suppliers. How will Welsh Government guarantee this?</p>
<p><b>Question 14:</b> 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)?</p>	<p>We would like details as to how all this, and the legislation more generally, will work alongside the WTO Government Procurement Agreement, which the UK is now part of.</p> <p>We would also be interested to hear how this work will link with previous discussions around Fair Work, Fair Care and how care is commissioned and paid for.</p> <p>As is suggested in the paper, expansion should only be considered after a review of construction. It is difficult to suggest a view on this when we do not have this information.</p>
<p>Key provisions of the draft Bill: Social Partnership Council</p>	
<p><b>Question 15:</b> What is your view on the provisions set out in the draft Bill concerning:</p> <p>a. Membership of the Social Partnership Council;</p> <p>b. The proposed nomination process?</p>	<p>WCVA welcomes the opportunity for the voluntary sector to be represented on the Social Partnership Council (SPC). This was missing from the previous consultation on this subject in 2019. However, there are a number of issues with the membership structure.</p> <p>One voluntary sector representative is not enough. A single person or organisation cannot hope to speak for a sector as wide and diverse as the voluntary sector.</p> <p>As shown on the <a href="#">Third Sector Data Hub</a>, the sector in Wales accounts for over 8% of employment in the country – approximately 100,000 employees. Over</p>

48,500 of those work in health and social care, often having close links to the public sector.

These figures show that the sector should not be treated as a 'junior partner' by Welsh Government, but in giving the private and public sectors three seats on the Council and the voluntary sector just one, that is what is happening here. This risks losing not just the majority of the voice of the sector, but also the voices of the communities and people we serve. This in turn can only be a significant barrier to the Act's aim of inclusivity.

Another potential issue with the balance of power lies in the relationship between local authorities and the voluntary sector. The two should be seen as equal partners, but this cannot be the case if local authorities have more seats on the Council and, moreover, have the power to cut funding to a fellow partner. Ultimately, while having one representative is better than none, as originally envisioned, anyone looking at the structure of the Council can only conclude that the sector is viewed as junior to other partners on it.

If there is to just be one sector representative on the Council, that representative will require resource and support in order to make the most of its role. Information is needed as to what the Terms of Reference for this role will look like.

That a third of the seats on the Council will go to Trade Unions means the Council risks losing the voices of the majority of people who are not members of trade unions. This includes most non-white people. According to TUC figures, BAME people account for just 9% of Trade Union membership, while under a third of workers in Wales overall are members of Unions. Again, this hurts

	<p>the inclusivity the Act is intended to create and creates a barrier to tackling inequalities in work experienced by Black, Asian and Minority Ethnic Communities. This is especially unfortunate given the pandemic is known to have disproportionately impacted on people from BAME communities.</p> <p>The make-up of the SPC also could potentially lead to a situation where Trade Unions are in favour of a course of action that might damage the voluntary sector, and the single voluntary sector representative is unlikely to be able to mount much opposition. WCVA encourages unionisation, but the balance of power seems to be significantly off here.</p> <p>It is vital that mechanisms are put in place to ensure that non-union voices, and non-unionised sectors, are heard.</p> <p>We are also surprised that housing doesn't seem to be represented among the membership given the portfolio of the Minister involved. We would like to hear the reasons for this decision.</p> <p>Finally, a document outlining the skill set and experience required of members of the Council is necessary for clarity and for the public to further understand the role of the Council.</p>
<p><b>Question 16:</b> What is your view on the proposals concerning the establishment and operations of the Social Partnership Council and its subgroups?</p>	
<p><b>Question 17:</b> 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?</p>	<p>Six levels of bureaucracy between local level and the SPC is too much. This is almost certain to lead to crucial local issues not making their way up the chain to be heard by the SPC. One of the key lessons from the Covid response has been around reducing</p>



	<p>tiers of bureaucracy as opposed to adding to them.</p> <p>We are also concerned that PSBs and RPBs will find this busy structure a barrier towards achieving their aims rather than a help.</p>
Supporting improvement and ensuring compliance	
<p><b>Question 18:</b> 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?</p>	<p>We are unsure how a 'collective contribution' could be effectively defined. However, this is what would need to happen to allow it to be legislated for.</p>
<p><b>Question 19:</b> 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?</p>	<p>No, given the planned make-up of the SPC, which does not give the sector sufficient voice as to have an effective say on these potentially critical judicial issues.</p>
<p><b>Question 20:</b> 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?</p>	<p>The consultation documentation appears to be leaning towards advice, guidance and support for bodies who are not complying to measures, as opposed to financial penalties. This is far preferable to said financial penalties. Fining bodies leads to a risk of said body cutting services to communities in order to make up the deficit in its accounts, thereby potentially increasing social and economic inequality rather than reducing it.</p> <p>However, should procurement enforcement and contract management not be matters for primary legislation?</p> <p>We would like more information about how this all ties in with the Future Generations Commissioner's Section 20 review.</p>
Equalities and impacts	
<p><b>Question 21:</b> Do you agree with the impacts that are outlined in this section?</p>	<p>As previously noted, non-white people are not effectively represented on the</p>

<p>Are there potential unintended consequences on certain groups that should be considered?</p>	<p>SPC, so this lack of voice will have potentially negative consequences on them. Similarly, the voluntary sector works with a great many people – older people, refugees, young people, people with disabilities – but the disproportionate lack of a voice for the sector on the SPC means that these groups will also lack a voice, leading again to potentially negative consequences.</p>
<p><b>Question 22:</b> 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.</p>	
<p><b>Question 23:</b> Do you have any additional or alternative evidence which could help to inform the final Regulatory Impact Assessment?</p>	
<p><b>Question 24:</b> 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?</p>	<p>See Q25.</p>
<p><b>Question 25:</b> 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.</p>	<p>We would like to see the Bill ensure Welsh speakers are able to access public services in their chosen language. There is opportunity for the Bill to do this, but it is not indicated that it will.</p>

**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.

This Bill ultimately boils the concept of 'social partnership' down to 'fair work'. Fair work is undoubtedly a key ingredient of true social partnership, but it is far from the only one. Specifically, the Bill should include more engagement for community groups and the voluntary sector – key partners in their local communities – in this partnership.

The balance of power between the members of the partnership council is also inappropriate, with too much emphasis given to some groups, especially those perceived as being directly linked to fair work, and those who contribute to a wider set of well-being principles.

The voluntary sector plays a substantial role in promoting a fair society and has many principles and examples of good practice to share – in partnership.

We would be happy to further discuss all these points and others with officials, Committees or Ministers if requested.