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Llywodraeth Cymru  
Welsh Government

## Welsh Government Consultation Document

# Draft Social Partnership and Public Procurement (Wales) Bill

A consultation on draft legislation to strengthen and promote consistency in the Welsh system of social partnership, to deliver fair work outcomes, and to ensure socially responsible public procurement.

Date of issue: 26 February 2021  
Action required: Responses by 23 April 2021

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

<b>Overview</b>	This consultation seeks views on the draft Social Partnership and Public Procurement (Wales) Bill and on wider policy concerning social partnership, fair work and socially responsible public procurement.
<b>How to respond</b>	Responses to this consultation should be emailed or posted using the details below or using the online response form by 23 April 2021 at the latest.
<b>Further information and related documents</b>	Large print, Braille and alternative language versions of this document are available on request.
<b>Contact details</b>	<p>For further information, please contact:</p> <p>Social Partnership and Fair Work Directorate  Welsh Government  Cathays Park  Cardiff  CF10 3NQ  email: <a href="mailto:SocialPartnership@gov.wales">SocialPartnership@gov.wales</a></p>
<b>Also available in Welsh at:</b>	<a href="https://llyw.cymru/bil-drafft-partneriaeth-gymdeithasol-chaffael-cyhoeddus-cymru">https://llyw.cymru/bil-drafft-partneriaeth-gymdeithasol-chaffael-cyhoeddus-cymru</a>

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The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

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## Foreword by the Deputy Minister for Housing and Local Government

There has never been a more important time to work together for a fairer, more equal and just Wales. The COVID-19 pandemic has reaffirmed our commitment to social partnership and demonstrated its value in making decisions to the broader benefit of the people of Wales.

Social partnership brings together trade unions, employers and Government on areas of shared interest to identify and implement solutions that bring about better outcomes. The draft Social Partnership and Public Procurement Bill, which we are publishing for consultation, is a key step towards our vision of Wales as an inclusive nation with a vibrant economy that values and safeguards our workforce at its heart.



Social partnership is a well-established way of working in Wales. Over the course of devolution, working in partnership has become a fundamentally Welsh way of doing things. Our ambition now is to build on the existing successes of social partnership to create a strengthened and more joined-up system, legislating for a Social Partnership Council, chaired by the First Minister with national cross-sector leadership and trade union representation, alongside formalised social partnership arrangements across our public bodies.

Continuing our work to ensure that Wales is a nation of fair work is a key priority. The draft Bill seeks to build on the work of the Fair Work Commission, by using the levers within our legislative competence to drive forward its recommendations. The draft Bill sets out provisions to establish a system of fair work objectives on Welsh Ministers to ensure a transparent and consistent approach to providing good and safe employment in Wales, working with our trade union and employer social partners.

The draft Bill also sets out measures to ensure that public procurement is undertaken with consideration to social, economic, environmental and cultural well-being and to provide greater transparency and clarity by establishing socially responsible procurement objectives, in principle and practice, with a focus on outcomes. This is central to our long-standing commitment to using the power of the public purse to bring about broader benefits to our communities, our workplaces, and our country.

The Welsh Government is committed to working in partnership to make a difference to people and public services, to workplaces, and to Wales. We look forward to receiving responses to this consultation on the draft Social Partnership and Public Procurement Bill and to continuing to work together through the consultation to develop the draft Bill.

Hannah Blythyn MS  
Deputy Minister for Housing and Local Government

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# 1. Key definitions

## **Social partnership**

Social partnership is a participatory process in which social partners engage in co-operation and joint problem solving on areas of mutual interest. There are two main forms of social partnership: bipartite and tripartite.

In bipartite social partnership, social partners are representatives of employing organisation(s) and representatives of recognised trade union(s). Many organisations currently have arrangements in place through which their senior management engage with recognised trade union(s) on matters that concern their workforce, even if the term 'social partnership' is not used.

In tripartite social partnership, social partners are representatives of employing organisation(s), representatives of recognised trade union(s) and representatives of the Welsh Government. Tripartite social partnership arrangements can exist on sectoral, regional and national levels.

In all social partnership arrangements, social partners work in a collaborative spirit, recognising and respecting each other's interests, to deliver positive outcomes for all in a manner that recognises the value and well-being of members of the workforce and their contribution to delivering the goals of their employing organisation and society as a whole. Social partners jointly adopt and adhere to the social partnership principles of 'co-operation', 'respect', 'trust', 'voice and participation', and 'mutual gains'.

The NHS Welsh Partnership Forum is an example of social partnership in action. This health sector tripartite social partnership arrangement brings together senior management for NHS Wales, recognised healthcare trade unions for NHS Wales, and Welsh Government representatives.

## **Fair work**

As defined in the Fair Work Wales (2019) report, fair work is where workers are fairly rewarded, heard and represented, secure and able to progress in a healthy, inclusive environment where rights are respected.

The Fair Work Commission identified six key characteristics of fair work:

- Fair reward;
- Employee voice and collective representation;
- Security and flexibility;
- Opportunity for access, growth and progression;
- Safe, healthy and inclusive working environment;
- Legal rights are respected and given substantive effect.

Inclusion, equality and respect for human rights are integral across the above characteristics.



## **Socially responsible public procurement**

Socially responsible public procurement is taking action, when purchasing goods, services and works to achieve the well-being goals, and the new fair work goal detailed below, in order to improve economic, social, environmental and cultural well-being.

These matters must be considered throughout the procurement and contract management processes.

## 2. Executive summary

1. This consultation seeks views on the draft Social Partnership and Public Procurement (Wales) Bill ('the draft Bill') and wider policy concerning the subject areas of the draft Bill. This consultation document has been published together with the draft Bill itself and its Regulatory Impact Assessment (RIA). Questions in this consultation concern the measures set out in the draft Bill, wider policy questions, and the content of the RIA.
2. Developed alongside specialists from the Welsh trade union movement, the Welsh business community, and public sector organisations in Wales, working alongside Welsh Government, the draft Bill is intended to deliver the following:
  - a. To strengthen and promote consistency in the Welsh system of social partnership. The draft Bill establishes a social partnership duty on in-scope public bodies to consult with their recognised trade union(s) when exercising certain functions concerning their well-being objectives. The draft Bill further sets out provisions to establish a statutory Social Partnership Council (SPC), chaired by the First Minister. The SPC is intended to provide leadership for the social partnership system, and to connect social partnership arrangements at the local, sectoral, regional and national levels in Wales.
  - b. To maximise Welsh Ministers' contribution to delivering fair work through the fair work goal and outcomes. The draft Bill places a duty on Welsh Ministers to set fair work objectives in consultation with the Social Partnership Council; to take actions to meet those objectives; and to report annually on what has been done and how much progress has been made in reaching those objectives. This process of setting objectives, taking actions and reporting on progress is intended to maximise Welsh Ministers' contribution to the goal of fair work as part of a wider vision to make Wales a 'fair work nation'.
  - c. To achieve socially responsible procurement. The draft Bill sets out duties on specified public bodies to ensure that, when procurement is undertaken, there is consideration of social, economic, cultural and environmental well-being and fair work. There are further duties set out concerning contract management and transparency. The measures outlined in the draft Bill seek to leverage the power of the public purse to deliver outcomes beneficial to society.
3. Through the measures outlined above concerning social partnership, fair work and socially responsible procurement, the draft Bill has the following two cross-cutting purposes:
  - a. To improve the delivery of public services in Wales, including by making decision-making in Wales more robust and effective through a strengthened and more consistent social partnership system with fair work at its heart that supports delivery of excellent and innovative public services

- b. To improve well-being, especially social and economic well-being, in Wales, by ensuring that the voice and interests of workers are central to decision making; by contributing to addressing economic inequalities; by delivering fair work outcomes; and by ensuring that well-being is a key consideration in public procurement.
- 4. The development of the draft Bill has been pursued in line with the proposals set out in the Welsh Government's White Paper *A More Equal Wales: Strengthening Social Partnership*, developed in social partnership and published in November 2019, to produce legislation to create statutory social partnership arrangements in Wales to drive social equality and to build on the principles of partnership and collaboration.<sup>1</sup>
- 5. In seeking to deliver fair work outcomes, the draft Bill forms a key part of the Welsh Government's response to the findings outlined in the *Fair Work Wales* (2019) report. The draft Bill delivers on the recommendation of the Fair Work Commission to place social partnership on a statutory basis through developing a Social Partnership Act.<sup>2</sup>
- 6. While the draft Bill is intended as a standalone piece of legislation, the aim of improving well-being, especially social and economic well-being, supports delivery in certain areas of the seven well-being goals set out in the Well-being of Future Generations (Wales) Act 2015.<sup>3</sup>

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<sup>1</sup> Welsh Government, [A More Equal Wales: Strengthening Social Partnership](#), Welsh Government, 2019 [Accessed 03 February 2021]

<sup>2</sup> Recommendation 10. Fair Work Commission, [Fair Work Wales: Report of the Fair Work Commission](#) (Welsh Government, 2019) [Accessed 28 January 2021], pp. 3-4.

<sup>3</sup> The well-being goals are: 'A prosperous Wales', 'A resilient Wales', 'A healthier Wales', 'A more equal Wales', 'A Wales of cohesive communities', 'A Wales of vibrant culture and thriving Welsh language', 'A globally responsible Wales'.

### 3. Context

#### **Social partnership**

7. Pioneered in post-war Austria, social partnership now plays a central role in various social, political and economic systems around the world. Social partnership is especially widespread in Europe. International forms of social partnership, some statutory and some non-statutory, exist with various models of co-operation between employers' organisations, trade unions and professional organisations. It is not the intention of the Welsh Government to adopt any particular model of social partnership, but rather to build on our own model that has emerged and evolved since devolution in 1999.
8. In Wales, there are many established social partnership arrangements between individual organisations, sector-wide representative groups and recognised trade unions in Wales, some of which pre-date devolution and all of which contribute to a collective common practice of social partnership. This draft Bill does not propose to replace existing arrangements; rather to strengthen them and to promote consistency.
9. Social partnership arrangements in Wales have developed voluntarily and organically. They are not currently underpinned by a common framework and are not co-ordinated to optimise their impact.
10. Social partnership arrangements exist on a national basis across the public sector through the Workforce Partnership Council. There are sectoral social partnership arrangements in health, education, and local government, involving Welsh Government and sponsored bodies. For business and employer representative organisations, trade unions and the members they represent, the Welsh Ministers' Business Scheme provides separate arrangements through the Council for Economic Development and the Social Partners' Strategy Group.

#### **Fair work**

11. Fair work – where workers are secure and able to progress in a healthy, inclusive environment in which they are collectively heard and represented; where there is fair reward, and where rights are respected – is a concept that is relevant to the lives of millions in Wales. Fair work is important in contributing to:
  - a. Improving mental and physical health.
  - b. Ensuring a safe working environment.
  - c. Reducing inequality and widening access to employment.
  - d. Reducing poverty and ensuring fair reward.

- e. Increasing workplace and civic participation.
  - f. Improving flexibility, productivity and the efficient delivery of services.
  - g. Increasing access to vocational and other skills training and ensuring workers have career progression opportunities.
  - h. Improving local and regional economies
  - i. Achieving a stronger, modernised, more inclusive economy.
12. In March 2017, then First Minister Carwyn Jones AM set out the vision of making Wales a 'fair work nation', a more equal, fair and just society, with jobs and the Welsh economy at the heart of this vision.<sup>4</sup> In July 2018, following substantial work completed in social partnership through the tripartite Fair Work Board, he appointed Professor Linda Dickens to chair an independent Fair Work Commission. The Fair Work Commission was tasked with making evidence-based recommendations to promote and encourage fair work in Wales.
  13. In March 2019, the Fair Work Commission published its findings in the *Fair Work Wales* report. The Welsh Government accepted the Fair Work Commission's six priority recommendations in full and the remaining 42 recommendations in principle.<sup>5</sup>
  14. Work has started on various aspects of *Fair Work Wales* which demonstrate how the Welsh Government is working within the parameters of legislative competence and non-legislative capabilities, including:
    - a. Working in social partnership to raise awareness of rights and responsibilities by launching the Workforce Rights and Responsibilities Campaign.
    - b. Engaging with the UK Government to promote and safeguard Welsh interests in regard to reserved employment law.
    - c. Creating the national Health and Safety Forum, which sets out to improve the approach to health and safety at work in Wales. The Health and Safety Forum brings together employer representative organisations, the Wales TUC and enforcement bodies.
    - d. Creating the Social Care Fair Work Forum, which seeks to improve working conditions in social care.

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<sup>4</sup> Martin Shipton, '[Carwyn Jones to tell Welsh Labour members he wants to create a 'fair work nation'](#)', Wales Online, 25 March 2017 [Accessed 28 January 2021].

<sup>5</sup> The six priority recommendations are recommendations 1, 2, 10b, 26, 35, 42. *Fair Work Wales*, pp. 2, 4, 6, 9.

- e. Developing a suite of outcome measures mapped to the six characteristics of fair work. These measures will help benchmark our current position, help us to track progress over time, and help inform the development of future policy.
- f. Working across the Welsh Government to promote fair work outcomes across the Welsh economy – using levers such as the Economic Contract and Code of Practice on Ethical Employment in Supply Chains.

## **Socially responsible public procurement**

- 15. Over £6.7bn of public money is spent each year through procurement and commissioning in Wales.<sup>6</sup> 52% is now spent through Wales-based suppliers – a steady increase over the last 15 years.
- 16. It is a long-established principle that how funding is spent can have a wide impact. Wales has well-established non-statutory mechanisms for ensuring that social, economic and environmental outcomes are delivered through procurement. One of the main policy tools has been the Community Benefits toolkit, which was first published in 2010 and then updated in 2014 to include a measurement tool and strengthening the focus on increasing employment and training opportunities. This was updated again in 2020.
- 17. The Community Benefits approach is a way of incorporating social requirements into procurement in order to benefit the communities in the areas in which contracts are delivered. Bidders are asked to demonstrate how they will deliver the client's priorities. This becomes part of the contract if they are successful. Community Benefits has been the Welsh Government's key mechanism for creating jobs and training through procurement. As of the end of May 2020, 698 projects worth almost £2.5bn had used the approach, retaining 82% of that £2.5bn in Wales as a combination of revenue to businesses and salaries, creating 2,911 job opportunities, 1,508 apprenticeships and 128,975 weeks of training.
- 18. Policy concerning socially responsible public procurement is currently being developed and refined. Welsh Government has been working with the Welsh Local Government Association and other stakeholders to co-produce a set of social value measures for the Welsh public sector that can be applied to the measurement of traditional procurement and other financial investments and build on the work of Community Benefits. The ambition is to find a way of capturing and reporting the benefits of public funding in Wales in terms of social value that is closely aligned to the seven well-being goals of the Well-being of Future Generations (Wales) Act 2015.
- 19. A revised Wales Procurement Policy Statement (WPPS) is also being developed to reflect and build upon the new working arrangements and

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<sup>6</sup> Procurement expenditure analysis 2108 to 2019. Welsh Government, [WPPN 01/20 Social value clauses/community benefits through public procurement](#), Welsh Government (2020) [Accessed 28 January 2021].

relationships that have been established with colleagues across the public sector. The revised statement provides an opportunity to update the WPPS to better reflect the well-being goals and address perceived or real tensions between lowest costs and achieving wider outcomes. The updated WPPS is due to be launched in the first half of 2021.

20. Fair work has been a policy priority for public procurement for several years, with a Procurement Advice Note on blacklisting in the construction industry and a Code of Practice on Ethical Employment in Supply Chains both published in 2017.<sup>7</sup> These set out how procurement and contract management levers should be used to make sure that unlawful and unfair practices, such as blacklisting of unionised workers, false self-employment and unfair use of umbrella employment schemes and zero hours contracts, are not tolerated within publicly funded supply chains.
21. The Welsh Government Code of Practice on Ethical Employment in Supply Chains was developed in social partnership. Its twelve commitments include publishing policies and an anti-slavery statement, training staff, carrying out risk assessments on categories of expenditure, making sure unlawful and unethical employment practices are not present within supply chains, and requiring organisations to consider paying all staff above the Real Living Wage. However, the Code is voluntary, and signing up is not usually a condition of receiving a grant or contract, although organisations receiving public funding are encouraged to sign up. The Code currently has just over 300 signatories, around a quarter of which are public bodies – a small fraction of the organisations that could sign up
22. In 2019, the *Fair Work Wales* report recommended that the content of the Code should be extended to cover its wider definition of fair work and should become mandatory for those in receipt of public funding.<sup>8</sup>
23. Strengthening the foundational economy in Wales is a cross-government priority and there is a growing commitment to use public sector spending to support home-grown businesses and Welsh supply chains where possible. Procurement plays an important role in maximising the amount of business won by Welsh firms to strengthen the economy and sustain and create employment. A Challenge Fund is supporting work to drive innovation and engage local public and private anchor organisations to explore opportunities for using their expenditure to drive up local wealth in their regions.

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<sup>7</sup> [Code of Practice: Blacklisting in the Construction Industry – Public Advice Note for the Public Sector in Wales](#); [Code of Practice: Ethical Employment in Supply Chains](#), Welsh Government (2017) [Accessed 28 January 2021].

<sup>8</sup> Recommendations 21 and 22. *Fair Work Wales*, p. 6.

24. The revised Two-tier Code of Practice was published in 2014 and is designed to provide protection for workers when services are outsourced to a third party. It requires that contracting exercises should be conducted on the basis that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) should apply to all transferring staff, unless there are genuinely exceptional reasons for it not to do so. The Code also requires that new joiners to a contracted-out service are also employed on terms which are no less favourable to transferred staff, with the exception of pension arrangements where reasonable pension provision must be made as indicated in the Code.
25. The Code is an important component of the Government’s approach to fair work. It includes procurement guidance, model contract terms, and an alternative dispute resolution process, with an expectation that recognised trade unions are involved in negotiations. Service providers are also expected to extend the requirements to sub-contractors if necessary. Monitoring arrangements are also included, with an expectation that service providers provide the public body with information when requested to allow compliance to be monitored. Public bodies are also required to report annually to Welsh Ministers on the outsourcing of contracts they have entered into in the previous year and whether or not the Code’s provisions were applied.



## 4. Why the Bill is required

### Social and economic challenges

26. The Welsh Government seeks a strong, resilient and diverse economy that makes a difference for the people of Wales and which increases both wealth and well-being through a fairer distribution of the benefits of economic growth.
27. Wales has world-class expertise across a diverse range of fields, supported by some of the UK's best colleges and high-quality universities. However, there are key economic challenges to a strong, resilient and diverse economy that makes a difference for the people of Wales. These challenges include:
  - a. Deindustrialisation;
  - b. Lack of occupational and sector diversity;
  - c. Economic inactivity;
  - d. Unstable and insecure employment;
  - e. Unequal access to employment;
  - f. In-work poverty;
  - g. Productivity and investment that lags behind the rest of the UK;
  - h. Accelerating technological change;
  - i. Slow diffusion of innovation;
  - j. Sickness and in-work illness rates;
  - k. The challenge of an ageing population.<sup>9</sup>
28. Overcoming these challenges is key to achieving the Government's well-being objectives, from tackling regional inequality and promoting fair work to promoting good health and well-being for everyone.
29. These challenges have been exacerbated by the COVID-19 pandemic. The pandemic has had an unprecedented impact on people's jobs and incomes.<sup>10</sup> National economies across the world have further been affected.<sup>11</sup> Measures

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<sup>9</sup> A more detailed description of some of these challenges is given in [Prosperity for All: Economic Action Plan](#), Welsh Government (2017) [Accessed 28 January 2021] .

<sup>10</sup> Bevan Foundation, [Coronavirus and Fair Work](#), Bevan Foundation (2020), [Accessed 01 February 2021].

<sup>11</sup> See A. Podvršič and others, Mitigating the COVID-19 effect: Emergency Economic Policy-making in Central Europe, European Trade Union Institute (2020); OECD, Policy Brief: Policy Responses to the Covid-19 Crisis, OECD (2020); E. Duffin, [Impact of the](#)

have been put in place to reduce the risk of transmission, such as social distancing, and restrictions on meeting, which have meant major changes to the way we work. COVID-19 has disproportionately and negatively affected already-marginalised social groups, including people with health conditions and disabilities,<sup>12</sup> women,<sup>13</sup> people from Black, Asian and ethnic minority backgrounds,<sup>14</sup> young people<sup>15</sup> and older people.<sup>16</sup>

30. The differential impact of COVID-19 on different workforce groups has refocused attention on those who can easily get left behind, and who, despite often fragile employment conditions, have proved to be the backbone of the Welsh economy and the response to the pandemic. Evidence shows that the bottom end of the labour market often becomes a trap for people, stuck in low-paid, insecure jobs that offer no prospects for progression.<sup>17</sup> As attention turns to recovery and life after the pandemic, it is important that we do not lose sight of lessons that we have learned, and maintain the principles of fair work and social partnership as we plan for the future.
31. Linked to the above, the social and economic challenges caused by COVID-19 present unique challenges to fair work. With worsening inequalities and economic recession, employers' ability to fairly reward their staff is challenged,<sup>18</sup> as well as their ability to retain staff,<sup>19</sup> and the quality and quantity of jobs is compromised.<sup>20</sup> Collective representation and employee voice can be

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[Coronavirus Pandemic on the Global Economy – Statistics & Facts](#), 21 September, Statista. [accessed 29 October 2020].

<sup>12</sup> See, for example, Wales TUC Cymru, [Disabled Workers in Wales and Covid-19](#), Wales TUC Cymru (2020), [Accessed 01 February 2021]; Inclusion London, [Abandoned, Forgotten and Ignored: The Impact of the Coronavirus Pandemic on Disabled People \(Interim Report\)](#), Inclusion London (2020), [Accessed 01 February 2021].

<sup>13</sup> See, for example, C. Rivera, Y. Hsu, F. P. Esbry and E. Dugarova, [Gender Inequality and the COVID-19 Crisis: A Human Development Perspective](#), United Nations Development Programme [Accessed 30 October 2020].

<sup>14</sup> See, for example, M. Loubaba and T. Jones, The Impact of COVID-19 on Black, Asian and Minority Ethnic Communities, The National Institute for Health Research Applied Research Collaboration West and University of Bristol, 2020.

<sup>15</sup> See, for example, C. Leavey, A. Eastaugh and M. Kane, [Generation COVID-19: Building the Case to Protect Young People's Future Health](#), The Health Foundation, 2020 [accessed 30 October 2020].

<sup>16</sup> See, for example, A.L. Mueller, M.S. McNamara, and D.A. Sinclair, 'Why does COVID-19 disproportionately affect older people?' *Aging*, 12 (10), 2020.

<sup>17</sup> Josh Stott, [What is inclusive growth and why does it matter?](#), Joseph Rowntree Foundation, 12 January 2017 [accessed 01 February 2021].

<sup>18</sup> OECD, Social Economy and the COVID-19 Crisis: Current and Future Roles, OECD Publishing, 2020.

<sup>19</sup> The Global Deal, [Social Partnerships in the Time of the Covid-19 Pandemic](#), The Global Deal, 2020 [accessed 27 October 2020].

<sup>20</sup> International Labour Organisation, COVID-19 and the World of Work: Impact and Policy Responses, International Labour Organisation, 2020.

undermined when redundancy and unemployment rates are rising.<sup>21</sup> Offering security, flexibility, and opportunities for growth to workers becomes more difficult for many employers when faced with severe economic challenges. All of these factors are central to the overall economic, social and environmental well-being of Wales and influence and impact on the everyday delivery and focus of public services in Wales.

32. Against this background, it is important that we have robust and fit for purpose structures that enable Government, employers and trade unions to more effectively work together on shared objectives, with an understanding of opportunities and limitations. It is essential that there is a shared agenda and a focus for engagement and activity.

### **Challenges to improving the delivery of public services**

33. Since 2020 the delivery of public services has faced unprecedented challenges due to COVID-19. Workers employed to deliver public services by public, private and third sector organisations have worked in uniquely difficult circumstances to protect the health, education, well-being and security of the people of Wales. At the same time, the pandemic has shown how dependent we are on effective public services.
34. It is important that workers delivering public services can continue to be able to work in fair, safe, healthy and inclusive environments, receiving fair reward, having their rights respected, having their voice heard through collective representation, with opportunities to progress and develop themselves professionally.
35. The measures set out in the draft Bill are intended to ensure that public services can be delivered and improved on a long-term sustainable basis, recognising the importance of ensuring that those who do so much for our society are employed in line with the characteristics of fair work.
36. The challenges caused by COVID-19 have further demonstrated the need for public services to be innovative and agile, ensuring that the design of services can evolve and improve in tandem with rapid societal changes that present new challenges and priorities. The importance of social partnership in Wales has been demonstrated through the positive impact of social partnership arrangements in bringing together civil society to respond collectively and collaboratively through this period. Examples of this include the Shadow Social Partnership Council in providing advice to Welsh Ministers, the Health and Safety Forum in seeking to safeguard and improve workers' health and safety, and the work of sectoral and local social partnership arrangements that has taken place concurrently through this period.

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<sup>21</sup> See Office for National Statistics, *Labour Market Overview, UK: October 2020*, Office for National Statistics, 2020.

## Case for change: Social partnership

37. Social partnership involving trade unions is important in:
- a. Identifying opportunities;
  - b. Resolving conflicts;
  - c. Reaching and reinforcing consensus;
  - d. Improving quality of information and decision making;
  - e. Aiding implementation and adherence to decisions;
  - f. Addressing injustice, unfairness and inequality.<sup>22</sup>
38. There are various social, economic, historical, cultural and political factors particular to Wales that are favourable to social partnership. These include:
- a. A strong tradition of a Welsh spirit of collaboration, characterised by community solidarity, shared ownership of problems, and a shared commitment to joint solutions.
  - b. The current existence of a number of long-standing social partnership arrangements and structures between individual organisations, sector-wide representative groups, and trade unions, including some pre-dating devolution.
  - c. The strong commitment by successive Welsh Governments to working in social partnership to deliver public service improvements and to develop the Welsh economy.
  - d. A higher trade union membership rate and collective bargaining coverage in Wales relative to other parts of the UK.
39. During the COVID-19 pandemic, social partnership arrangements have been utilised successfully both in Wales and around the world to shape national responses. The European Trade Union Institution analysed the responses of various national governments to the pandemic and found that more inclusive policy making, and greater consideration of worker needs, are associated with political systems which make more extensive use of social partnership working.<sup>23</sup>

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<sup>22</sup> P. Findlay, C. Lindsay, A. Watson, D. Young, [Influencing Employers So More People Break Free From Poverty Through Work](#), Joseph Rowntree Foundation, 2019, [Accessed 01 February 2021].

<sup>23</sup> Podvršič and others, Mitigating the COVID-19 effect, 2020.

40. COVID-19 has also highlighted the need for social partnership to be sustainable and to have a high impact in the long-term, with consistency and a clear strategic vision that unites and connects all levels of social partnership and where participation does not place partners under excessive burden.
41. There is, however, no single model of social partnership in Wales. Our non-statutory social partnership models involve many examples of positive progress but also a lack of uniformity in approach and delivery. There are limitations on how much change can happen unless the social partnership approach has a statutory underpinning. We want to promote greater consistency of approach and believe the effectiveness of social partnership arrangements in Wales can be strengthened

### **Case for change: Fair work**

42. There is substantial evidence demonstrating the long-term economic and social benefits of fair work. This includes evidence that fair work increases productivity and the delivery of higher quality work, demonstrating clearly how fair work can improve delivery of public services.<sup>24</sup>
43. A model developed by the Scottish Centre for Employment Research demonstrates the role of fair work in driving workplace innovation and productivity, where the benefits of that work is shared by employers and workers.<sup>25</sup> With widespread implementation of fair work practices, there is a potential for economic growth that is inclusive.<sup>26</sup> The rationale of this model is that fair working practices motivate workers to produce high-quality goods and services and that it enhances creativity.<sup>27</sup>
44. Evidence further shows that fair working conditions correlate with increased productivity.<sup>28</sup> This increase in productivity can benefit workers and employers alike under collective agreements. In the context of the delivery of public services, this further directly impacts on the experience of those receiving these services.
45. Organisations that are able to offer the opportunity for progression can expect benefits such as a broader and richer pool of talent, positive impact on recruitment, retention and reputation, and more efficient resource allocation.<sup>29</sup> The long-term and broader effects of this are a more equitable and inclusive

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<sup>24</sup> See, for example, G. Rogers and K. Richmond, [Fair Work and Productivity](#), Fraser of Allander Institute Economic Commentary, 2016 [accessed 18 November 2020].

<sup>25</sup> Fair Work Convention, [Fair Work Framework 2016](#), Fair Work Convention, 2016 [accessed 18 November 2020].

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Rogers and Richmond, Fair Work and Productivity, 2016.

<sup>29</sup> Findlay, Lindsay, Watson, Young, Influencing Employers So More People Break Free From Poverty Through Work, 2019.

society in which people can contribute more effectively to their local community and economy.<sup>30</sup>

46. In-work security offers a range of benefits, including improved flexibility and adaptability for both businesses and workers, a reduced need for public spending, and improved health and well-being across society. In-work security has also been shown to correlate with reduced child poverty.<sup>31</sup>
47. Inclusive working environments are particularly important for people traditionally excluded from the typical workplace, for example people with disabilities. People with disabilities are already less likely to earn the National Living Wage than non-disabled people.<sup>32</sup> They are also more likely to report being unfairly treated at work.<sup>33</sup> The long-term impact of this is continued disadvantage within and exclusion from the labour market for people with disabilities. The economy misses out on the skillset offered by people with disabilities, with negative impacts including a narrower talent pool, businesses experiencing poor retention rates and wider social inequality.
48. The Report of the Future Generations Commissioner 2020 noted that ‘public bodies are focussing on employment and economic growth, but are not making the links to “fair work” in their objectives and steps.’ It was noted as ‘striking’ that the Welsh Government was the only public body in Wales to have a well-being objective or step that explicitly made reference to fair work.

### **Case for change: Socially responsible procurement**

49. The expectations of the contribution that procurement can make to wider policy objectives have been well documented. This is an area where the Government has made good progress, which supported a strong collaborative response to the supply chain challenges of the COVID-19 pandemic.
50. However, over a period of time, there have been a number of reviews highlighting improvements that could be made. The Wales Audit Office’s report, *Public Procurement in Wales* in 2017,<sup>34</sup> was followed by a further review into the work of the National Procurement Service (NPS) and Value Wales (VW) in the same year. The National Assembly for Wales’ Public Accounts Committee subsequently undertook an inquiry into public procurement in Wales.<sup>35</sup> The

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<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Nick Coleman, Wendy Sykes, and Carola Groom, [Barriers to Employment and Unfair Treatment at Work: A Quantitative Analysis of Disabled People’s Experiences](#), Equality and Human Rights Commission 2013 [Accessed 01 February 2021].

<sup>33</sup> Ibid.

<sup>34</sup> Wales Audit Office, [Public Procurement in Wales](#), 2017 [Accessed 01 February 2021].

<sup>35</sup> Senedd Cymru, [Public Procurement](#) [Accessed 01 February 2021].

Future Generations Commissioner is currently undertaking a review, the early research of which has identified similar issues.

51. Amongst other things, these reviews identified challenges for public bodies in balancing competing procurement priorities, responding to new policy, legislation, and technology, and recruiting and retaining procurement staff. It has been suggested that more focus should be placed on social value outcomes and less on financial savings and that more support was needed to embed requirements such as the Code of Practice for Ethical Employment in Supply Chains. Contract management and due diligence in supply chains were also identified as areas where improvement is needed.
52. Progress has been made as a result of these reviews. However, legislation provides the opportunity to make greater strides forward, and specifically to provide greater clarity and address competing priorities.
53. Public procurement in Wales above certain thresholds is currently regulated by the Public Contracts Regulations 2015 (PCR), and related legislation for utilities and concessions contracts. These regulations are derived from EU law, and primarily cover the mechanisms for excluding bidders in certain circumstances and how procurements should be carried out between contract advertisement and award. Proposals for new regulations to replace these are being consulted on in England. Welsh Government has recently engaged with stakeholders on possible procurement reform for Wales. Whilst there are links and overlaps between what is being proposed in this draft Bill and the PCR, this draft Bill focuses on the broader matters of setting strategy, measuring, reporting, compliance and contract management.

## **Consultation questions**

**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?

## 5. Key provisions of the draft Bill: Social partnership

### Overview

54. Part 1 of the draft Bill places a duty, called the social partnership duty, on certain public bodies to consult with their recognised trade union(s), as far as is reasonable, in carrying out sustainable development when setting well-being objectives and when making decisions of a strategic nature about the reasonable steps the public body takes, in the exercise of its functions, to meet those objectives
55. This duty applies to public bodies listed in section 6 of the Well-being of Future Generations (Wales) Act 2015 and which are subject to the well-being duty in the Act. The draft Bill and the Well-being of Future Generations (Wales) Act 2015 share a common purpose in seeking to promote well-being and sustainable development in Wales. This shared purpose has informed the decision to link the social partnership duty with the well-being duty in the Well-being of Future Generations (Wales) Act 2015.
56. In requiring public bodies to engage in social partnership, the intention is that this way of working will support improving public services and enhancing well-being, including fair work, and in particular enhance the consistency of the Welsh social partnership system.

### Scope

57. The public bodies listed in section 6 of the Well-being of Future Generations (Wales) Act 2015, and which are therefore intended to be in scope of the social partnership duty set out in the draft Bill, are listed below. Please also see the table of bodies set out in section 7 of this consultation document.
  - a. The Welsh Ministers;
  - b. Local authorities;
  - c. Local Health Boards;
  - d. The following NHS Trusts:
    - (i) Public Health Wales;
    - (ii) Velindre University NHS Trust (including NHS Wales Shared Services Partnership);
  - e. A National Park authority for a National Park in Wales;
  - f. A Welsh fire and rescue authority;
  - g. The Natural Resources Body for Wales;



- h. The Higher Education Funding Council for Wales;
- i. The Arts Council of Wales;
- j. The Sports Council for Wales;
- k. The National Library of Wales;
- l. The National Museum of Wales.

## **Requirements of the duty**

58. The social partnership duty is a duty on the above public bodies to consult with their recognised trade unions when carrying out certain functions as described above. The draft Bill specifies that when consulting, in-scope public bodies must, as far as is reasonable:
  - a. Start the consultation at the formative stage of the process of setting objectives or making decisions;
  - b. Seek compromise and consensus.
59. The draft Bill does not stipulate how this consultation will take place. This is to ensure that public bodies will have flexibility and can utilise existing forums and processes through which they consult with their recognised trade union(s). It is, however, envisioned that this consultation would take place through meetings, either in-person or remotely, rather than through written communication only.
60. It is intended that public bodies will ensure that their consultation with their recognised trade union(s) will be from an early stage, before any decision has been made, and that both parties will adhere to the following social partnership principles (which do not appear on the face of the draft Bill but are intended to be set out in Guidance):
  - a. Cooperation: Shared commitment to success through joint problem solving, compromise and reaching consensus.
  - b. Respect: Shared commitment to mutual recognition of legitimate and potentially conflicting interests.
  - c. Trust: Shared commitment to relationships based on integrity, authenticity, transparency, openness and selflessness.
  - d. Voice and Participation: Shared commitment to proactive and timely sharing of information, consultation and engagement .
  - e. Mutual Gains Shared commitment to achieving improvements in public services, social and economic well-being and fair work outcomes.

61. The draft Bill sets out that in-scope public bodies must have regard to any guidance published by Welsh Ministers concerning working in social partnership.
62. As part of the social partnership duty, the draft Bill sets out that in-scope public bodies will publish a report annually and submit the report to the Social Partnership Council concerning the operation of their social partnership arrangements. The report will be agreed with the public body's recognised trade union(s) or will contain a statement explaining why it was not agreed. It is intended that guidance will be issued by Welsh Ministers that will detail the reporting processes. Where the public body is the Welsh Ministers, they will lay the report before the Senedd as soon as reasonably practicable after the end of the financial year.

## **Consultation questions**

**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?

## 6. Key provisions of the draft Bill: Fair work

### Overview

63. Part 2 of the draft Bill places a duty on Welsh Ministers to set fair work objectives in consultation with the Social Partnership Council; to take all reasonable steps to meet those objectives; and to report annually on what has been done and how much progress has been made in reaching those objectives. The draft Bill sets out that the annual report must be laid before the Senedd – ensuring wider transparency and the opportunity for scrutiny.
64. The draft Bill provides for a hierarchy that is intended to flow as follows:
  - a. Identification of the ‘fair work goal’, which is a description of certain characteristics associated with fair work and framed by the definition in *Fair Work Wales*.
  - b. Objectives to be set, published and reviewed by Welsh Ministers, in consultation with the Social Partnership Council, and which would seek to maximise Welsh Ministers’ contribution to achieving the fair work goal.
  - c. The pursuit of all reasonable steps (the reasonable measures) to be taken to meet the objectives.
  - d. Annual reporting on the outcome of those steps and actions and the progress made in meeting the objectives.
65. This process of setting objectives, taking actions and reporting on progress is intended to maximise Welsh Ministers’ contribution to achieving fair work – whilst improving knowledge and understanding of actions in this regard. For illustrative purposes, a representation of how fair work objectives will be developed, delivered, and reported upon is set out in a diagram within this section.

### Defining fair work in a devolved context

66. The Welsh Government wishes to see Wales become a ‘fair work nation’. We endorse the widely accepted definition of fair work set out in the report of the Fair Work Commission: ‘Fair work is where workers are fairly rewarded, heard and represented, secure and able to progress in a healthy, inclusive environment where rights are respected.’
67. We also endorse the six key characteristics of fair work identified by the Fair Work Commission:
  - a. Fair reward;
  - b. Employee voice and collective representation;

- c. Security and flexibility;
  - d. Opportunity for access, growth and progression;
  - e. Safe, healthy and inclusive working environment;
  - f. Legal rights are respected and given substantive effect.
68. The Fair Work Commission's report, *Fair Work Wales*, recognised that there are limits on what the Welsh Government can do legislatively within the current devolution settlement as set out in the Government of Wales Act. *Fair Work Wales* also recommended that the Welsh Government explores and takes all opportunities within its legislative competence to take forward fair work.
69. Therefore, in keeping with the recommendations, we are seeking to explore through this draft Bill how we can take forward fair work, within our legislative competence, whilst retaining Government's ambition to make Wales a 'fair work nation'.

## **Devolved powers to legislate**

70. The current devolution settlement places specific limits on the ability of the Senedd to legislate in particular areas. The Wales Act 2017 amended the Government of Wales Act 2006 to introduce a 'reserved powers' model of devolution. This provides that everything is devolved unless it appears in a list of reservations, which cover matters reserved to the UK Parliament. The devolution settlement also place a number of further restrictions on the Senedd's ability to legislate, which are set out in Schedule 7B to the 2006 Act.<sup>36</sup>
71. For the purposes of providing some focus to the consultation, we identify here some examples of potential areas in which the Welsh Government could take action to support our ambition to make Wales a 'fair work nation', which are related to the six characteristics of fair work identified by the Commission, and which would be within devolved competence.
72. Devolved fair work objectives (actions which the Welsh Government could choose to take action in pursuit of a fair work goal set out in the draft Bill) might include:

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<sup>36</sup> One of the reserved matters (Schedule 7A para 141) is 'employment rights & duties and industrial relations'. This reservation covers the subject matter of seventeen UK Parliamentary Acts including:

- a. the Trade Union and Labour Relations (Consolidation) Act 1992,
- b. the Employment Relations Act 1999 and
- c. the Employment Rights Act 1996.

The sole devolved exception to this reservation is the subject matter of the Agricultural Sector (Wales) Act 2014.

- a. Action on public sector pay – for example, to improve transparency or to address identified pay gaps.
  - b. Pursuing the universal application of the Partnership and Managing Change Agreement amongst public bodies in order to ensure workers are able to collectively influence significant organisational change.
  - c. Improving and supporting opportunities for employees to work remotely and flexibly across Wales.
  - d. Increasing access to vocational training opportunities for young workers as well as wider work-based learning opportunities.
  - e. Improving access to mental health and occupational health support in the workplace.
  - f. Increasing awareness among the workforce of employment rights and duties.
73. This list is intended simply to illustrate the types of activities Welsh Ministers could choose to pursue in relation to fair work under the proposed legislation. If the draft Bill becomes law, Welsh Ministers would seek to define relevant fair work objectives through dialogue with social partners and with reference to the desired outcomes using the structures established by the legislation.
74. As we continue to explore legislating in this complex area, we are specifically seeking views on issues that could be legislated for which sit within the boundaries of our legislative competence and that could progress our ambitions for a 'Fair Work Wales'. In furtherance of this, we are seeking views on a definition of fair work that is within competence. A question on this definition is given below (Question 7) and responses to this consultation will provide the opportunity for the widest possible input. During the consultation period, we will also closely engage with our social partners to specifically utilise their expertise in the practical application of fair work concepts and what that might mean for the definition of fair work to be set out in the legislation.

## **Representation of the processes for fair work objectives**

The list below represents how fair work objectives will be developed, delivered upon, and reported upon, in conjunction with the social partnership system.

- a. Welsh Ministers identify and develop key priorities to advance fair work in Wales in pursuance of the aim of improving economic and social well-being and improving public services: fair work objectives.
- b. Each sector progresses through their appropriate joint structures. In the public sector this would be with a view to reaching agreement on action(s) at an sector level.
- c. Welsh Ministers report annually to Senedd Cymru on progress in meeting the fair work objectives.
- d. Welsh Ministers feedback on the debate on the annual report to the SPC for consideration in its regular planning process.
- e. The SPC advises Welsh Ministers on the lessons learned from both private and public sectors, along with any further action required to progress the fair work objective.
- f. The annual reporting process provides consolidated feedback on achievement of fair work objectives, the social partnership system and an evaluation of the effectiveness of the system.
- g. Monitoring reports on progress made to achieve fair work objectives are fed through the social partnership system into the SPC.
- h. Detailed work is conducted within organisations.
- i. Local social partnership arrangements convert the national agreement and sector plans into specific actions relevant and appropriate to that organisation.
- j. Welsh Ministers ask the SPC for advice on the proposed fair work objectives.
- k. Welsh Ministers consider the advice of the SPC and publishes their fair work objectives. Welsh Ministers take SPC advice on whether best practice guidance, grant/procurement conditioning, statutory guidance etc. is required / appropriate to sector context and devolved powers.
- l. Action plans for attainment of individual fair work objectives determined at sector level.
- m. All considerations will feed back into the SPC through a sub-group or directly from social partners to ensure all matters are considered by the SPC before issuing advice to Welsh Ministers.

## Consultation questions

**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?

## 7. Key provisions of the Bill: Socially responsible public procurement

### Overview

75. Part 3 of the draft Bill establishes duties towards delivering socially responsible public procurement and contract management in Wales. The intentions of the draft Bill are to:
- a. Support contracting authorities in ensuring that well-being and fair work are central considerations in procurement, in order to support economic growth and the long-term sustainability of public services;
  - b. Simplify, and remove duplication between the large number of policy expectations placed on procurement departments;
  - c. Ensure that well-being and fair work outcomes are at the heart of procurement strategies and processes;
  - d. Improve the link between procurement processes and the delivery of outcomes by better contract management;
  - e. Improve transparency by recording metrics and publishing regular reports sharing good practice and areas where improvements are needed; and
  - f. Hold organisations to account for ensuring that contract conditions supporting socially responsible practices are maintained throughout supply chains, particularly in large construction contracts and outsourcing services contracts.

### Bodies in scope

76. The following table represents the bodies that are subject to the procurement duties as detailed in this section in addition to the social partnership duty as set out in section 5 of this consultation document.
77. A longer list of public bodies are subject to the procurement duties than the social partnership duty. This is because more public bodies are engaged in significant procurement activity than are required to comply with the social partnership duty.
78. The overarching socially responsible procurement duty, the contract management duty for major construction contracts, and the provisions around improvement and compliance will apply to organisations that are Welsh contracting authorities, and so are covered by existing procurement legislation. The policy intention is that proportionality will be built into the expectations and



guidance to ensure that small organisations are not unduly burdened by these proposals.

79. The duty on social public workforce clauses (new arrangements for the application of the Workforce (Two-tier) Code of Practice) apply to a smaller list of bodies. This is because the list is largely unchanged from the bodies to which the Code of Practice currently applies. However, it should be noted that community councils, the governing bodies of maintained schools, and the Local Democracy and Boundary Commission for Wales, which are currently in scope of the existing Code, are not included. They will still be subject to the existing Code, which will remain in place pending any updates.

<b>Body</b>	<b>Social partnership duty</b>	<b>Socially responsible procurement duty</b>	<b>Social public workforce clauses (“Two-tier Code”)</b>
The Arts Council of Wales	Yes	Yes	Yes
The Higher Education Funding Council for Wales	Yes	Yes	Yes
A local authority	Yes	Yes	Yes
A Local Health Board	Yes	Yes	Yes
The National Library of Wales	Yes	Yes	Yes
The National Museum of Wales	Yes	Yes	Yes
A National Park authority for a National Park in Wales	Yes	Yes	Yes
The Natural Resources Body for Wales	Yes	Yes	Yes
Public Health Wales NHS Trust	Yes	Yes	Yes
The Sports Council for Wales	Yes	Yes	Yes
Velindre University NHS Trust	Yes	Yes	Yes

A Welsh Fire and rescue authority	Yes	Yes	Yes
The Welsh Ministers	Yes	Yes	Yes
Transport for Wales	Yes	Yes	Yes
Welsh Revenue Authority	Yes	Yes	Yes
Digital Health Care Wales	Yes	Yes	Yes
<b>Body</b>	<b>Social partnership duty</b>	<b>Socially responsible procurement duty</b>	<b>Social public workforce clauses ("Two-tier Code")</b>
The Children's Commissioner for Wales	No	Yes	No
The Commissioner for Older People in Wales	No	Yes	No
The Future Generations Commission for Wales	No	Yes	No
A governing body of a further education institution in Wales	No	Yes	No
A governing body of a higher education institution in Wales	No	Yes	No
Registered social landlords	No	Yes	No
Senedd Commission	No	Yes	No
The Welsh Language Commissioner	No	Yes	No
<b>Body</b>	<b>Social partnership duty</b>	<b>Socially responsible procurement duty</b>	<b>Social public workforce clauses ("Two-tier Code")</b>
The Royal Commission on the Ancient and Historical Monuments of Wales	No	Yes	Yes
Social Care Wales	No	Yes	Yes

The Welsh Ambulance Services NHS Trust	No	Yes	Yes
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## **Socially responsible procurement duties**

80. The diagram at the end of this section illustrates how the procurement, contract management and compliance proposals in this draft Bill work together to deliver socially responsible public procurement throughout the procurement cycle. These duties complement existing public procurement regulations that relate primarily to processes for advertising and awarding public contracts. They also focus on increasing transparency of procurement objectives and outcomes.
81. The procurement duties begin with an overarching duty on contracting authorities to seek to improve the social, economic, environmental and cultural well-being of their areas by carrying out public procurement in a socially responsible way. This means taking action to achieve the well-being goals and the fair work goal (together, the 'socially responsible procurement goals').
82. A contracting authority must also set and publish objectives designed to achieve the socially responsible procurement goals. These objectives will apply to all 'prescribed' contracts. The draft Bill includes major construction contracts (above £2m) and outsourcing services contracts within the category of prescribed contracts, but in other respects this category will be established in regulations. Current policy expectations are that, for goods and services, prescribed contracts will include all those above which the Public Contracts Regulations 2015 apply in central government. This threshold changes at regular intervals and is currently £122,976.
83. One way of carrying out socially responsible procurement is to take particular actions when procuring a major construction contract; another is to take particular actions when procuring an outsourcing services contract. These contract management duties are explained in the following section.
84. Contracting authorities will be required to publish procurement strategies and a register of current contracts. They will also be required to produce annual reports which will cover their procurement activity over the previous year, allowing achievements to be publicised and good practice shared. Strategies and annual reports will allow each authority to describe and report on its own organisational priorities and processes, as well as providing the information required by statutory guidance.
85. For practical purposes, and where possible, this annual reporting will be streamlined with the reporting requirements of the Well-being of Future Generations (Wales) Act. These reports will also include details of planned future procurements.
86. Once these reports have been published, the Welsh Government will publish a summary report, highlighting good practice and areas of weakness, and including other relevant data.

87. Guidance on the application of the overarching duty, the setting of objectives, and the required content of strategies and annual reports will be developed in consultation with the Social Partnership Council and the procurement community. Several existing guides and toolkits cover much of the detail of the matters covered by the overarching duty, and the consultation described will provide an opportunity to draw this together, simplify where necessary, and address areas of overlap.

## **Contract management duties**

88. Two separate contract management duties are included in the draft Bill. Their inclusion reflects the importance of strengthening the link between requirements included within procurement exercises, and the due diligence and focus on outcomes that is required by contract managers.
89. The first contract management duty is designed to improve due diligence in applying socially responsible contract terms throughout supply chains. These terms are referred to in the draft Bill as social public works clauses. The focus of this duty is on the construction sector where risks of poor compliance with social obligations, including those in relation to unfair and unlawful employment practices, can be hard to address throughout long and complex supply chains.
90. The duty will oblige contracting authorities planning construction procurements with expected value over £2m, or call-offs with values of over £2m from existing frameworks, to report to the Welsh Government if they do *not* intend to:
  - a. apply all of the social public works clauses, or
  - b. ensure that these are maintained throughout supply chains, or
  - c. establish a mechanism for monitoring their application.
91. These clauses fall into the following categories:
  - a. Ensuring and enforcing prompt payments.
  - b. Providing employment opportunities to younger people, older people, the long term unemployed, people with disabilities or people who are otherwise disadvantaged.
  - c. Ensuring compliance with legal obligations in relation to employment rights (including the minimum and living wage), health and safety, and trade union representation.
  - d. Providing appropriate training for workers.
  - e. Providing opportunities to small and medium sized enterprises, social enterprises or voluntary sector organisations to execute works, supply products or provide services.

- f. Requiring sustainable management of natural resources, reduction of greenhouse gas emissions, and protection or enhancement of the natural environment and diversity.
92. If the contracting authority does not intend to include all of the social public works clauses or monitor their implementation through subcontracts, it will be required to send an exception notification to Welsh Ministers as soon as is reasonably possible. The contracting authority will be asked to give reasons for this decision, and if further investigation is necessary at that stage, the Social Partnership Council will be provided with the notification and details, and will seek advice from its procurement subgroup as to whether an exception report should be published. If Welsh Ministers are not satisfied, they may direct the contracting authority to take certain steps or publish an exception report if a disagreement remains. In other words, matters may be resolved at any stage of this process.
  93. Statutory guidance will include model terms and details of the processes that should be put in place to monitor and manage these and report on outcomes. It should be noted that social public works clauses are not intended to replace community benefit requirements in procurements, which continue to be a way of contributing to achieving socially responsible procurement goals.
  94. Although the intention is to focus on the construction industry and on larger contracts in the first instance in order to test the application of this duty, Welsh Ministers may extend this duty to other sectors of the Welsh economy at a later stage.
  95. The second contract management duty is a change to the Workforce (Two-tier) Code of Practice, which is already set out as guidance or direction for certain bodies.<sup>37</sup> The draft Bill will provide a statutory basis to the Code of Practice. The Code of Practice provides that contracting and retendering processes involving staff transferring from public bodies should be carried out to ensure that terms and conditions are protected and pensions remain broadly comparable. It also ensures that new joiners to a transferred-out workforce are also employed on terms that are no less favourable.
  96. This Code applies to a different list of bodies to those covered by the procurement duties (see table above). The existing Code includes model contract clauses covering the matters set out in the previous paragraph. These are likely to be reissued in response to the duty placed on Welsh Ministers in the draft Bill to publish draft clauses. They are referred to in the draft Bill as social public workforce clauses.
  97. The planned changes to the operation of this Code of Practice in this draft Bill are restricted to placing an additional requirement on authorities. If the authority does not intend to apply and monitor the contract clauses for itself and its supply chain, an exception notification must be issued to Welsh Ministers. At

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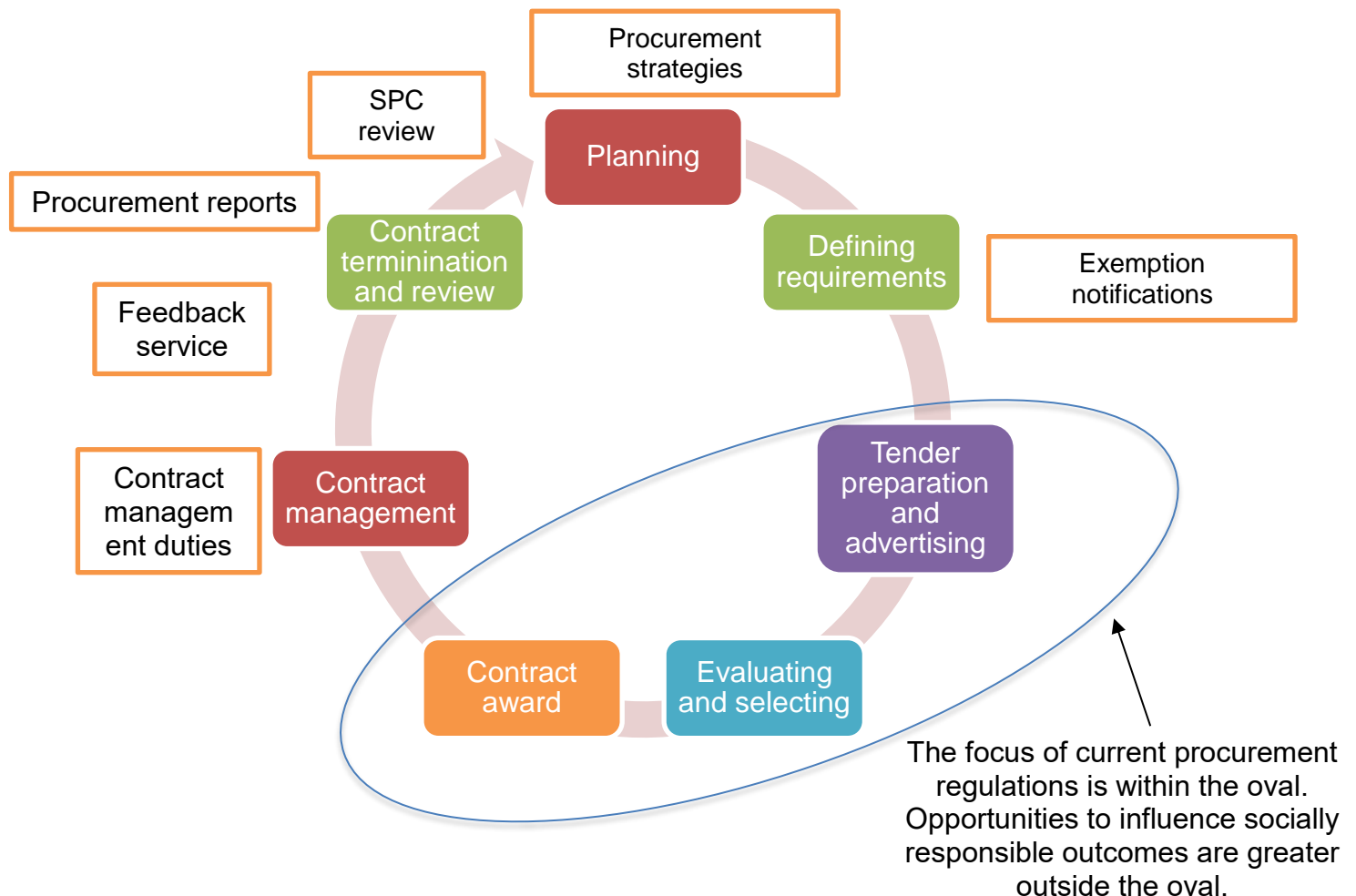
<sup>37</sup> See, for example, section 19 of the Local Government Act 1999 or section 60 of the Government of Wales Act 2006, and as direction under sections 12 and 10 of the NHS (Wales) Act 2006 or article 11 of the Natural Resources Body for Wales (Establishment) Order 2012.

present the reporting process occurs annually in retrospect, and that requirement will remain. The new duty will be the same as that for the social public works clauses, requiring that the notification is reviewed by Welsh Ministers, who may then notify the Social Partnership Council, assisted by its procurement subgroup, which may in turn advise Welsh Ministers, who may direct the authority to take certain steps. If a disagreement between the contracting body and Welsh Ministers remains, an exception report may be published. It should be noted that the draft Bill is more explicit about the duty to monitor the application of the workforce clauses throughout the contract and any sub-contracts than in the current regulations.

98. Most of the procurement and contract management duties have parallels in existing Scottish and UK legislation and existing policy and are designed to reinforce current policy and strengthen existing mechanisms. As such, major unintended consequences are not expected. The social public works clause duty is new and untested, however. Due diligence supply chain tools exist in the construction industry, but no single ideal model or approach exists. One possible unintended consequence of this duty might be the development of a number of competing audit and supply chain transparency tools within the construction industry. These could be costly to implement and could raise costs for suppliers, especially SMEs. This consequence must be mitigated by engaging with smaller and medium-sized operators within the construction industry as well as the first-tier contractors as new systems are investigated and developed.

## Socially responsible procurement cycle representation

The diagram below represents the end-to-end procurement cycle and the proposed actions by public bodies to fulfil the socially responsible procurement and contract management duties set out in the draft Bill. As well as the draft provisions set out in orange outlined outer boxes, an overarching 'socially responsible procurement duty', applying to all procurement, covers the entire procurement cycle.



## Consultation questions

**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 Two-tier 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)?



## 8. Key provisions of the Bill: Social Partnership Council

### Overview

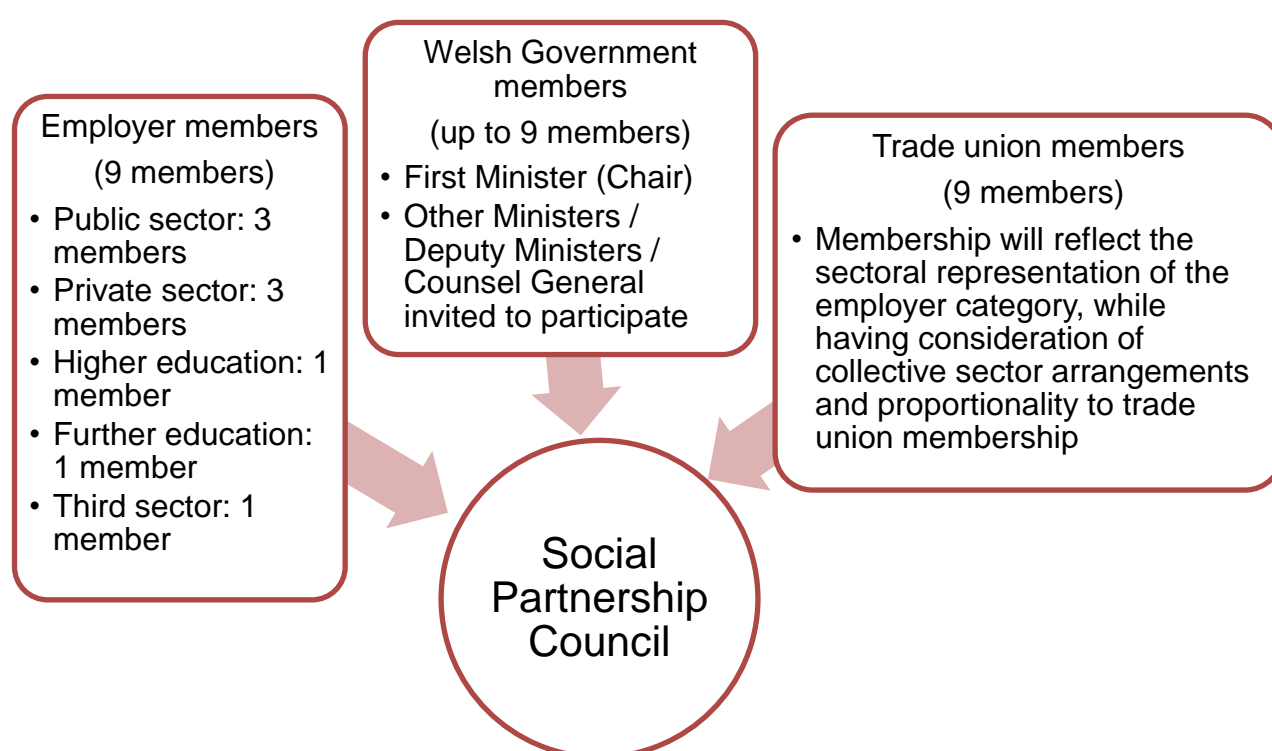
99. Part 4 of the draft Bill sets out provisions concerning the establishment of a tripartite statutory advisory body, a national cross-sector forum chaired by the First Minister known as the Social Partnership Council (SPC) that connects the social partnership, fair work and socially responsible public procurement provisions of the draft Bill. The SPC is intended to provide a channel for the voice and participation of social partners, specifically employers and trade unions, in the development and implementation of Government policy. The primary purpose of the SPC will be to support Welsh Ministers in their actions to improve public services and to increase well-being, especially social and economic well-being, including through strengthening and enhancing the consistency of the Welsh system of social partnership.
100. To achieve the purpose outlined above, the SPC will have the following objectives:
- a. To provide leadership and promote consistency in the Welsh system of social partnership. The SPC will lead a system that connects local, regional, sectoral, cross-sectoral and national levels of social partnership, including through articulating a common vision and providing guidance and direction regarding social partnership in Wales.
  - b. To provide a formal channel through which employers and trade unions can engage with Welsh Ministers, reach consensus on issues of mutual interest, and provide advice to Welsh Ministers to better inform policy and shape implementation.
  - c. To provide oversight of the progress achieved as a result of the introduction of the social partnership, socially responsible procurement and fair work duties including issuing advice and guidance and providing direction to support implementation, monitoring of non-compliance, and an escalation route for issues raised.
101. The draft Bill sets out that the function of the SPC is to provide advice to Welsh Ministers concerning matters relevant to social partnership, fair work and socially responsible procurement.
102. The SPC will also:
- a. Provide advice, support and guidance to the social partners represented on the SPC.
  - b. Support employer and trade union social partners to work together to improve public service delivery and economic and social well-being in Wales.
  - c. Reach consensus voluntary agreements between social partners in pursuance of matters within the SPC's remit.

103. The Shadow Social Partnership Council (SSPC) has been established and is currently operating, chaired by the First Minister and serving as a channel for Welsh Ministers to connect with social partners on a cross-sector tripartite basis.

104. As part of the emergency response to the COVID-19 pandemic, fortnightly meetings of the SSPC, with an expanded membership to reflect the current situation, have been used to share information and details of policy development with social partners.

### Proposed structure

The diagram below represents the proposed membership of the Social Partnership Council:



105. The SPC will have a tripartite social partnership structure, with three categories of members (social partners):

- a. Nine members who will represent Welsh Government (including the First Minister as Chair of the SPC).
- b. Nine members who will represent employers in Wales.
- c. Nine members who will represent recognised trade unions in Wales.

106. While not set out in the draft Bill, it is intended that the terms of reference for the SPC will set out that additional stakeholders may be invited to attend meetings of the SPC by the First Minister when this has been agreed by SPC members.
107. The First Minister will seek nominations to the SPC from nominating bodies and will have responsibility for approving the nominations and appointments. These nominations and appointments are described in more detail in the sections for each category of membership.

## **Membership features**

108. The draft Bill sets out that each appointment to the SPC will last three years (unless the appointee resigns, or when, in highly exceptional circumstances, the First Minister terminates the appointment in writing). Following the end of that period, a new nomination and appointment cycle will begin following the process outlined above. Standard terms and conditions for public appointments will apply, with the exception of the nominating process. This is intended to be set out in the terms of reference of the SPC.
109. Following the end of that period, a new nomination and appointment cycle will begin following the process outlined above.
110. Welsh Ministers will expect diversity of representation in nominations received for each membership category, including with respect to gender, race and disability, to ensure that the SPC reflects the diversity of the Welsh workforce. Minimum diversity requirements may be set out in the SPC terms of reference.
111. The First Minister will ordinarily accept the nominations made by the employer and trade union nominating bodies. In highly exceptional circumstances, such as conflict of interest issues, the First Minister will contact nominating bodies to seek resolution. This may include seeking new nominations.

## **Welsh Government membership**

112. This category will comprise the First Minister (as Chair of the SPC) and up to eight others, who can be Welsh Ministers, Deputy Ministers and the Counsel General, who are invited to attend by the First Minister. If the First Minister is unable to chair a meeting of the SPC, the First Minister will nominate another Minister to chair. This will only occur in highly exceptional circumstances.

## Employer membership

113. Employer representation will comprise nine members. They will comprise:

- a. Three members representing the public sector in Wales. These members are intended to represent a range of organisations and authorities defined under section 6 of the Well-being of Future Generations (Wales) Act 2015 as 'public bodies'.
- b. Three members representing the private sector in Wales. These members are intended to represent a range of businesses in the private sector.
- c. One member representing the higher education sector in Wales. This member is intended to represent a range of organisations defined within section 91(5) of the Further and Higher Education Act 1992 as the governing bodies of institutions in Wales within the higher education sector.
- d. One member representing the further education sector in Wales. This member is intended to represent a range of organisations defined within section 91(3) of the Further and Higher Education Act 1992 as the governing bodies of institutions in Wales within the further education sector.
- e. One member representing the third (voluntary) sector in Wales. This member is intended to represent a range of organisations as defined in the Third Sector Scheme under section 74 of the Government of Wales Act (2006).

114. The draft Bill sets out that all nine employer members will be appointed by the First Minister. In advance of making these appointments, the First Minister will seek nominations from nominating bodies that are intended to be set out in the terms of reference for the SPC and changed and updated when necessary. Potential nominating bodies under consideration are as follows:

Representing	Nominating Body	No. of Members
Public sector: county councils and county borough councils	Welsh Local Government Association	1
Public sector: local health boards and NHS Trusts	NHS Employers	1
Public sector: Welsh Government sponsored bodies and devolved public bodies (excluding local government and health)	Welsh Government Public Bodies Unit	1
Private sector	CBI	1
	FSB	1
	Chambers Wales	1

Further education sector	Colegau Cymru	1
Higher education sector	Universities Wales	1
Third (voluntary) sector	WCVA	1

## Trade union membership

115. The trade union representation will comprise nine members. This membership will reflect the sectoral spread of the employers' representation set out above, while having consideration of collective sector arrangements and proportionality to trade union membership.
116. All nine members will be appointed by the First Minister. The First Minister will seek nominations from the Wales TUC. The Wales TUC is designated as the nominating body for trade union membership in the draft Bill in consideration of the Wales TUC's autonomy for Welsh matters and its existing role of co-ordinating the collective views and participation of trade unions (including those not affiliated to the Wales TUC) in current tripartite, cross-sector social partnership arrangements.

## Operations

117. The draft Bill sets out that the SPC will meet at least three times in each 12 month period beginning with the day after the First Minister has made all initial appointments of members.
118. A terms of reference, setting out procedures and quorum for the SPC, will be produced and published by Welsh Ministers within six months of all initial appointments being made. This will govern the practical operation of the SPC.
119. The SPC will consider individual issues, as well as structural issues, relating to how employers, employees and trade unions work together in order to make recommendations to Welsh Ministers. The knowledge and experience of the SPC membership, as well as any reports it receives from its subgroups, as detailed further below, will inform its work. It will then be for the Welsh Ministers to consider the recommendations and determine whether any action is required through their statutory functions and through the support and co-operation of social partners.
120. Co-operation and problem solving are key tenets of social partnership. The SPC is intended to be able to encourage and embed this type of approach further in Wales in line with the social partnership principles. Through advising Welsh Ministers, it is intended that the SPC will have a key role in shaping future policy direction in Wales, acting as a system leader.
121. The draft Bill sets out that the SPC will provide advice to Ministers concerning their fair work duties outlined in section 6 of this consultation document.

122. The draft Bill sets out that the SPC will provide advice to Welsh Ministers concerning the socially responsible procurement duties set out in section 7 of this consultation document. The draft Bill sets out that a procurement subgroup will be established for the purpose of advising the SPC on these matters and is detailed below in the subgroups section.
123. Although the SPC's sole statutory function is set out in the draft Bill as providing advice to Welsh Ministers, its establishment and existence will encourage members to take responsibility for pursuing further social partnership activity within their respective organisations/sectors.
124. Although this will not be set out in law, the intention is that decisions and agreements will be made at the SPC, with the consensus of all members. The agreement-making process will be set out in the terms of reference. Organisations, sectors or others cannot be legally bound by any decision or agreement by the SPC. Any agreement reached by members of the SPC will therefore be voluntary in nature and not undermine collective bargaining arrangements. Such agreements could take the format of 'framework' agreements such as strategies, principles or guidance that enable action to be taken by and within sectors in social partnership. Social partners will have responsibility for overseeing the implementation of decisions taken within their sectors and will report on this to the SPC.
125. The SPC will develop links with sectoral and regional social partnership structures and with other relevant stakeholders.

## **Subgroups**

126. The draft Bill sets out that the SPC will be empowered to create subgroups that will provide advice and recommendations to the SPC. The SPC will agree the remit and membership of all such subgroups and this process will be set out in the SPC terms of reference. All subgroups will be chaired by one (or more) SPC members.
127. The SPC will be placed under a duty to take all reasonable steps to establish a procurement subgroup to support the SPC in its role advising Welsh Ministers on socially responsible public procurement. The procurement subgroup will have the same status and role as any other subgroup. It is expected that its membership will include relevant technical experts in procurement.
128. Each subgroup must be chaired by a member of the SPC. However, other members may be drawn from outside the SPC. The SPC will agree the remit and membership of all subgroups.

## **Social partnership system**

129. In establishing the Social Partnership Council and the social partnership duty outlined in section 5, the intention of the draft Bill is to strengthen and promote consistency in the Welsh system of social partnership.
130. The SPC will provide system leadership, establishing relationships and connecting the different levels of social partnership and ensuring a strategic common purpose.
131. While the draft Bill does not set out provisions that directly relate to regional, sectoral and cross-sectoral levels of social partnership, it is intended that existing and future social partnership structures on these levels will work closely with the Social Partnership Council and with local social partnership arrangements.
132. An illustrative representation of how the social partnership system may operate in a cohesive manner to identify and address issues concerning well-being and the delivery of public services is provided on the next page.

## **Representation of the social partnership system**

The diagram below represents how the different levels of social partnership are intended to intersect in the public sector. The diagram illustrates how issues will be raised through the system from the local level through to sectoral / cross-sectoral / regional levels to the national cross-sectoral Social Partnership Council. It also shows how decisions and agreements at SPC level will translate into action at the other levels.

### **Local level social partnership structure**

- Individual / group issue raised by local social partner.
- Joint department/workplace management and trade union agree a resolution.
- Public body joint trade union/employer forum review and refine agreed approach for whole organisation application.
- Public body joint forum identifies that there may be some potential whole sector application and therefore escalate issue to sector / cross-sector / regional forum as example of good practice.



### **Sectoral / cross-sectoral / regional social partnership structure**

- Sectoral / cross-sectoral / regional trade union / employer joint forum reviews and agrees a whole sector / cross-sector / region approach.
- Sectoral / cross-sectoral / regional forum identifies that the resolution has potential wider application and therefore escalates via appropriate SPC representatives



### **Social Partnership Council**

- SPC reviews and refines for a whole public sector / national approach (utilising a subgroup if required).
- Welsh Ministers take SPC advice on whether there are elements which have application beyond the public sector.
- Welsh Ministers take SPC advice on whether best practice guidance, grant/procurement conditioning, statutory guidance etc. is required appropriate to sector / cross-sector / regional context and devolved powers.
- SPC refers whole public sector / national agreed approach to all in-scope sectors for implementation.



### **All sectoral / cross-sectoral / regional social partnership structures**

- Every sectoral / cross-sectoral / regional trade union/employer joint forum agrees a whole sector / cross-sector / regional approach to implementation appropriate to the context.
- Sector / cross-sector / regional joint forum passes agreement and guidance to each public body for implementation.





### All public bodies

- Public body joint union/employer forum agree specific actions required to implement the sector / cross-sector / regional agreement
- Guidance/training provided to departmental management and trade union representatives as required
- Joint communication plan agreed to inform workforce
- monitoring and reporting mechanism agreed
- Implementation reviewed as part of the annual joint report to SPC
- Significant failures to implement the agreement are escalated through the normal sector dispute arrangements



### Social Partnership Council

- SPC reviews annual reports of social partnership working and outcomes of any sector / cross-sector / regional level disputes
- SPC agrees any refinements required for the approach and refers these back to sector / cross-sector / regional level for implementation
- As appropriate, SPC reviews voluntary adoption in other sectors and delivery of any conditioning/statutory requirements set by Ministers.
- SPC advises Welsh Ministers on any additional actions (within competence) required for full implementation within the public sector and wider voluntary adoption / implementation

### Consultation questions

**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?

## 9. Supporting improvement and ensuring compliance

### Part A: Social partnership and fair work

133. The draft Bill sets out a number of obligations that fall on specified public sector bodies. There are also duties on Welsh Ministers to develop fair work objectives in consultation with the Social Partnership Council, act on them and report on progress. There is a role for the SPC in providing advice, support and guidance in meeting those duties. There are further duties placed on specified public bodies concerning socially responsible procurement and contract management. This is a collective approach to supporting the achievement of improved delivery of public services, improved social and economic well-being and the pursuit of fair work in Wales.
134. Social partnership is the golden thread which runs through the system and allows partners to take an agreed all-Wales position and give it practical application appropriate to the circumstances which exist for a sector or particular body. This allows 'self-policing' from either side in collective bilateral arrangements within public bodies. The policy approach for the draft Bill seeks to achieve compliance by building statutory social partnership arrangements to promulgate, progress and implement action through those individual public bodies.
135. There are some checks and balances built into the social partnership system through an annual reporting process but there may be situations where individual bodies may not fulfil their obligations under the draft Bill or indeed implement any of the agreed approaches that are considered by the SPC or sectors to be the appropriate course of collective action to achieve the purpose.
136. Welsh 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 requiring that body to meet that obligation.
137. The White Paper consultation, *A More Equal Wales: Strengthening Social Partnership*, received mixed responses regarding the issuing of fines to those bodies which failed to meet their obligations. The threat of financial penalties can sometimes be a useful deterrent but Welsh Ministers understand that such an approach is technically very difficult to operate and may also inadvertently lead to a loss of funds for public service which is contrary to the intent of the proposals.

## Consultation questions

**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?

## **Part B: Socially responsible procurement**

138. In the same manner as set out in Scottish legislation, it is proposed that transparency and scrutiny will be the main drivers for ensuring compliance.
139. As described above, with regard to both the Two-tier Workforce Code (social public workforce clauses) and the inclusion of social public works clauses in construction contracts with an estimated value above £2m, an exception notification will have to be issued to Welsh Ministers as soon as is reasonably possible if the body does not intend to apply the contract clauses.
140. The Social Partnership Council, with advice from its procurement subgroup, will scrutinise a summary of annual reports and exception notifications submitted to Welsh Ministers, and will report on these to Welsh Ministers.
141. The SPC, with advice from its procurement subgroup, will also review the Welsh Government's overarching annual procurement report. This will summarise the broad position in Wales from data included in contracting authorities' annual procurement reports, and will provide advice on this to Welsh Ministers. This report will be placed before the Senedd.
142. The draft Bill also makes provision for Welsh Ministers to investigate how a contracting authority carries out procurement. Contracting authorities will be placed under a duty to provide any information required to assist in these investigations, which could be triggered by matters arising from the annual reporting process, or through specific cases.
143. Although this is not set out in the draft Bill, the policy intention is that in order to identify specific cases for review a new service will be set up that is similar to the English Public Procurement Review service, established under section 40 of the Small Business Enterprise and Employment Act 2015.
144. The intention is that this new service will accept enquiries from trade unions and other organisations and make non-binding recommendations. Further details relating to this service will be set out in a service scope and remit document. The draft Bill provides Welsh Ministers with an investigatory power. The English service includes a final step whereby the details of the procuring organisation and the outcome of an investigation are published. The policy intention is that the new service will also publish a summary of each individual outcome. These recommendations are likely to address a requirement for further information, or the remedying of a particular problem. If issues raised are of wider applicability, these will be summarised through the annual reporting process, reviewed by the SPC with the help of its procurement subgroup, and may also result in the issuing of general guidance. Such wider issues may also become the subject of more general procurement investigations.

## Consultation questions

**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?

## 10. Equality and impacts

### Equality

- 145. The draft Bill is intended to positively impact on various protected characteristics which face persistent and widespread inequalities in the workplace through promoting fair work. There was a strong call in responses to the White Paper for increasing the focus on such protected groups. In developing the draft Bill, a draft assessment has been undertaken.
- 146. The White Paper consultation responses considered that social partnership is an important conduit for achieving greater equality across Wales, particularly in terms of addressing inequalities within the workplace and driving fair work
- 147. The draft Bill seeks to deliver fair work outcomes. Tackling inequality and promoting equality and inclusion for all protected groups is integral to all six characteristics of fair work and therefore to the fair work agenda.
- 148. Aligned to this is the Socio-economic Duty, which places a statutory duty on certain public bodies to ensure, when taking strategic decisions such as deciding priorities and setting objectives, due regard to the need to reduce the inequalities of outcome that result from socio-economic disadvantage. The Duty, alongside the draft Bill, forms part of a framework that seeks to build on the positive steps already taken by public bodies to address inequality, including measures to promote the well-being of future generations through sustainable development.

### Regulatory Impact Assessment

- 149. A Regulatory Impact Assessment (RIA) has been developed for the draft Bill. The purpose of the RIA is to provide information on the costs and benefits concerning the proposals set out in the draft Bill. The RIA includes an option appraisal and costs for each part of the draft Bill.

### Welsh Language Standards

- 150. There were two questions on the Welsh language in the White Paper. Some responses called for the Welsh language to be explicitly reflected within social partnership legislation, as it had a critical role to play in contributing to fair work and social equality.
- 151. Respondents also considered that the proposals could have a positive, rather than negative, impact upon the Welsh language and will expect the Welsh language to be part of effective collaboration and partnership working.
- 152. The introduction of the Welsh Language (Wales) Measure 2011 imposes a number of requirements on Welsh public bodies to promote and facilitate the

use of Welsh in its workplace amongst employees and in its external activities through the introduction of Standards, enforceable through individual Compliance Notices and officials must ensure that, as a minimum, these existing arrangements are protected.

153. However, it was recognised that the Welsh Language Standards do not apply to all organisations in Wales and one respondent to the White Paper suggested that ‘as part of the Social Partnership framework’, a similar but more informal, tailored approach could be introduced for the organisations not currently subject to the Welsh Language (Measures) Act.
154. Suggestions also included how the procurement provisions could specify what will be required in terms of Welsh language provision and services. These issues will be considered further when developing statutory guidance concerning the policy areas of the draft Bill.
155. Promoting the Welsh language is an example of what needs to be considered in the context of cultural well-being within the socially responsible procurement duties.

## **United Nations Convention on the Rights of the Child**

156. Welsh Ministers are obliged to have due regard to the United Nation Convention on the Rights of the Child (UNCRC) when exercising their functions, including when formulating new policies.
157. The proposals do not specifically impact on children or young people. However, by spreading the benefits of consistent economic growth more evenly, more families will be lifted out of poverty. Wage levels and certain types of working arrangements can contribute to the risk of poverty in working families. Analysis of the Family Resource Survey (2015-16 to 2017-18) showed that there are more children living in relative income poverty in working households than there are in workless households.
158. There are also links between poverty and adverse childhood experiences (ACEs). Results from the 2015 ACE survey in Wales shows that an increasing prevalence of poor diet was reported as an ACE and that poor diet was also most prevalent in areas with greatest economic deprivation. The results also show that those living in areas of deprivation are at greater risk of experiencing multiple ACEs. In seeking to improve social and economic well-being, the draft Bill is intended to impact positively on such ACEs.
159. The socially responsible procurement duties require certain organisations to consider well-being in the context of procurement. Measures taken to identify and mitigate risks of modern slavery, which includes labour exploitation and child labour, is a key issue in this context. Where goods, services or works contracts involve significant supply chains overseas, statutory and supplementary guidance will include the steps that should be taken to ensure that ethical sourcing is carried out.

## Consultation questions

**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?

**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.



## 11. Next steps

160. All responses to this consultation will be recorded as they are received and will be analysed following the end of the consultation period. A report on the responses will be produced and communicated to Welsh Ministers.
161. Full and proper consideration will be given to all responses. In analysing responses, appropriate weighting will be attached to responses from large organisations (such as large public bodies, employers and trade unions) and to responses from organisations directly impacted by the measures set out in the draft Bill.

## Annex: Consultation Response Form

Your name:

Organisation (if applicable):

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

Email / telephone number:

Address:

Question	Response
Why the Bill is required	
<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?	
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?	
<b>Question 3:</b> What is your view on the social partnership principles listed and defined in the table in this section?	
<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?	
Key provisions of the draft Bill: Fair work	
<b>Question 5:</b> What is your view on the proposed duties on Welsh Ministers concerning fair work objectives?	
<b>Question 6:</b> What is your view on key challenges and priority areas for pursuing and promoting fair work?	

<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'?	
<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?	
<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?	
<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?	
<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?	
<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 with the rest of the procurement duties? Should any additional changes be made to the way in which the Code operates?	
<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?	
<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)?	
Key provisions of the draft Bill: Social Partnership Council	
<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><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>	
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><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><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</p>	

measures could be applied? Do you have any suggestions as to how any additional enforcement and compliance measures might work in practice?	
Equalities and impacts	
<b>Question 21:</b> Do you agree with the impacts that are outlined in this section? Are there potential unintended consequences on certain groups that should be considered?	
<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.	
<b>Question 23:</b> Do you have any additional or alternative evidence which could help to inform the final Regulatory Impact Assessment?	
<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?	
<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.	

**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.