

REGULATORY IMPACT ASSESMENT

Draft Social Partnership and Public Procurement (Wales) Bill

15 March 2021

1. Summary

1. A Regulatory Impact Assessment has been completed for the draft Social Partnership and Public Procurement (Wales) Bill ('the draft Bill').
2. The following information presents a summary of the costs and benefits for the draft Bill as a whole and is designed to present the information required under Standing Order 26.6 (viii) and (ix).
3. i. The provisions of the draft Bill would give rise to annual gross administrative, compliance and other costs of £12,009,600. They would give rise to transition costs of £167,990. Over the five year legislative review period this would be a total cost of £60,048,000. The net administrative, compliance and other costs of the draft Bill's provisions are £31,223,000 over five years.

Annual costs

	Base level	Preferred option
SPC	424,000	404,000
SP Duty	0	192,900
Procurement	5,341,000*	11,412,700**
Sub-total	5,765,000	12,009,600
Over five years	x5	x5
Total	28,825,000	60,048,000

*Comprised solely of existing staffing costs for Commercial & Procurement

**Includes Commercial & Procurement staffing costs as these will not be incurred as a result of the draft Bill

Transition costs (itemised)	
SPC training (par 54)	3,790
SP duty familiarisation (par 110)	2,100
Procurement programme costs	82,000
Procurement awareness/training	80,100
Over 1 year	x1
Total	167,990

Gross cost = 60,048,000 + 167,990 = 60,215,990

Net cost = 60,048,000 – 28,825,000 = 31,223,000

3 ii. The benefits of the draft Bill that cannot be quantified financially are that:

- a statutory Social Partnership Council would provide national leadership to strengthen and promote consistency in social partnership working in Wales. It would be part of a system of social partnership established through the social partnership duty. It would be able to gather intelligence from other layers of social partnership in a systematic way in order to inform its deliberations and improve the quality of advice to Ministers;
- the introduction of a social partnership duty would strengthen action by public bodies in contributing to Wales' seven well-being goals and support delivery of the Welsh Government's fair work ambitions and the recommendations set out in *Fair Work Wales*. The provisions would ensure there is a strategic social partnership system when coupled with other provisions in the draft Bill;
- the introduction of socially responsible public procurement duties would focus the attention of public bodies on achieving socially responsible outcomes through including relevant clauses within contracts, passing these on through supply chains and putting processes in place to monitor these arrangements through supply chains and report outcomes.

2. Establishment of a Social Partnership Council

4. Two options have been identified and explored:

Option 1: Do nothing – continue to operate the Welsh Government’s existing social dialogue mechanisms for the improvement of public services and well-being in their current forms.

Option 2: Bring greater strategic coherence to the Welsh Government’s social dialogue mechanisms for the improvement of public services and well-being by creating a statutory Social Partnership Council including employers and trade unions from the public, private and third sectors. A statutory SPC would have, by virtue of its status, a legitimacy for system leadership, to connect and promote consistency in social partnership in Wales.

Table: summary of estimated costs for the two options relating to the establishment of a statutory Social Partnership Council

	£	
	Option 1 – do nothing	Option 2 – statutory SPC
Transition costs	-	3,790
Annual running costs (based on current staff costs)	424,000	404,000
Total costs over 5 years	2,120,000	2,038,950
Net cost over 5 years		-81,050

Option 1: Do Nothing

Description

5. This option would involve continuing to rely on existing structures to manage the Welsh Government’s social dialogue for the improvement of public services and well-being.
6. Social dialogue with private sector employers and trade unions would continue through the Council for Economic Development (CfED) and the Social Partners Strategy Group (SPSG).
7. Social dialogue with public sector employers and trade unions would continue through the Workforce Partnership Council (WPC) and its Joint Executive Committee (JEC).
8. Strategic social dialogue across the public, private and third sectors could continue through the non-statutory Shadow Social Partnership Council

(SSPC) which draws on the membership of the WPC and CfED at its core and also includes the statutory Commissioners as additional members¹.

9. There would be no legislative change required under this option.
10. The “do nothing” option would not take account of the recommendation of the Fair Work Commission to legislate to establish a statutory social partnership mechanism.

Costs – ‘do nothing’

11. The following section provides a summary of the total costs incurred in the operation of the current national Ministerial social dialogue mechanisms. The estimated annual running costs of maintaining the current system is **£424,000**.

Costs of the Council for Economic Development and the Social Partners Strategy Group

Running costs

12. Currently the Welsh Government provide the secretariat to the CfED. There are two members of Welsh Government staff supporting CfED meetings, as part of their wider roles within the Economic Policy Division. One is employed at Grade 7 and another is employed at Senior Executive Officer level (SEO). The Grade 7 member of staff spends eight working days supporting each meeting. The SEO member of staff spends around seven days for each meeting. The CfED meets three times a year.
13. The same staff also provided the secretariat to the SPSG. Until June 2019 the group met ten times a year. Each meeting took five working days each for the Grade 7 and SEO to organise.
14. Costs for Welsh Government staff are based on average staff costs for non-senior civil staff pay bands 2019/20 These include employment on-costs (pension, national insurance, etc.).

¹ The Commissioners for Children and Young People, Future Generations, Older People, Welsh Language and also representation from the Equalities and Human Rights Commission in Wales

Table – working out an estimated opportunity cost of Welsh Government staff administering the CfED and SPSG

Grade	Annual staff cost (£)	Daily rate (£) (divide by 220)	Days per year spent on CFED + SPSG	Cost per annum (£)
Grade 7	80,887	368	(8x3) + (5x10) = 74	27,232
SEO	62,678	285	(7x3) + (5x10) = 71	20,235
Total				47,467

15. The estimated running costs of the CfED meetings, expressed as an opportunity cost is **£47,500**.

Attendees opportunity costs

Table: Working out the estimated opportunity costs for one two hour meeting of the CfED²

Number and type of participant	Hourly gross wages (£) x participants x hours	Sub-total (£)
First Minister	91 ³ x 1 x 2	182
Two Ministers	65 ⁴ x 2 x 2	260
Fifteen senior stakeholders from business and unions	23 ⁵ x 15 x 2	690
Six senior Welsh Government officials	23 ⁶ x 6 x 2	276
Total		1,408

² Based on attendance at the last three meetings for which notes are available on line

³ Senedd Cymru Remuneration Board, [Determination on Members Pay and Allowances: 2020-2021](#)

⁴ As above

⁵ Using the ONS ASHE figures for the median average hourly gross pay for corporate managers and directors as a proxy. Unions are represented by senior full time union officials [Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14](#)

⁶ As above

16. The CfED meets twice a year so its annual opportunity cost is $1,408 \times 2 = \mathbf{£2,816}$.

Table: Working out the estimated opportunity cost of one two hour meeting of the Social Partners' Strategy Group

Number and type of participant	Hourly gross wages (£) x participants x hours	Sub-total (£)
First Minister	$91^7 \times 1 \times 2$	182
Four senior stakeholders from business and unions	$23^8 \times 4 \times 2$	184
Three senior Welsh Government officials	$23^9 \times 3 \times 2$	138
Total		504

17. Until June 2019, the SPSG met ten times a year. Therefore its estimated opportunity cost without employment on-costs is $504 \times 10 = \mathbf{£5,040}$

18. Taken together the annual estimated opportunity cost of the CfED and the SPSG are $2,816 + 5,040 = 7,856 + (7,856 \times 30\text{pc}) = \mathbf{£10,200}$ (to the nearest hundred). 30pc is added to the cost in order to reflect full staffing on-costs which include pension contributions and national insurance.

Costs of the Workforce Partnership Council and its Joint Executive Committee

Running costs and research support

19. The WPC ordinarily meets twice a year. Its Joint Executive Committee (JEC) meets six times a year. The WPC has a dedicated full-time joint secretariat of four people (one at Grade 6 and three at SEO). Their work is funded by the Welsh Government.

⁷ Using the Using the ONS ASHE figures for the median average hourly gross pay for a chief executive as a proxy. [Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14](#)

⁸ As reference 20 above

⁹ As above

Table – breakdown of costs for WPC joint secretariat

Grade	WTE	Cost per annum (£)
Grade 6	1	99,223
SEO	3	(62,678 x 3) = 188,034
TOTAL		287,257

20. Rounded to the nearest hundred, including employment on-costs, the cost of administering the WPC is **£287,300¹⁰**.

Opportunity costs

21. Attending the WPC and the JEC represents an opportunity cost for attendees.

Table: Working out the estimated opportunity cost for members of the WPC at each meeting

Number and type of participant	Hourly gross wages (£) x participants x hours	Sub-total (£)
Ten senior full-time trade union officials	23 ¹¹ x 10 x 2	460
Ten senior public sector employer representatives (director level)	23 ¹² x 10 x 2	460
Ten senior Welsh Government officials	23 ¹³ x 10 x 2	460
Deputy Minister	55 ¹⁴ x 1 x 2	110
Total		1,458

¹⁰ Costs for Welsh Government staff are based on average gross costs for non-senior civil staff pay bands 2019/20. This includes additional employment costs (pensions, national insurance contributions, etc.).

¹¹ Using the ONS figures for the mean average hourly gross pay for corporate managers and directors as a proxy.

¹² As above.

¹³ As above.

¹⁴ Senedd Cymru Remuneration Board, [Determination on Members Pay and Allowances: 2020-2021](#)

22. The WPC takes place twice a year, therefore the estimated opportunity cost of members' time is $1,458 \times 2 = \text{£}2,916$.

Table: Working out the estimated opportunity cost for members of attending the WPC's joint executive committee (JEC)

Number and type of participant	Hourly gross wages (£) x participants x hours	Sub-total (£)
Three senior full time trade union officials	$23^{15} \times 3 \times 2$	138
Three senior public sector employer representatives (director level)	$23^{16} \times 3 \times 2$	138
Three senior Welsh Government officials	$23^{17} \times 3 \times 2$	138
Total		414

23. The JEC takes place six times a year, therefore the estimated annual opportunity costs of its members time at the committee is $414 \times 6 = \text{£}2,484$.

24. Therefore, the total estimated annual opportunity cost of the WPC and its JEC meeting are $(2,916 + 2,484) + (2,916 + 2,484 \times 30\%) = 7,020$. The second part of this equation accounts for employment on-costs (pension, national insurance, etc.) Rounded to the nearest hundred this is **£7,000**

Costs of implementing the guidance emanating from the current WPC

25. Since its establishment, the WPC has produced a number of guidance documents relating to improving the delivery of public services. Here we provide some illustrative examples of costs incurred by a selection of public bodies in implementing the WPC's Partnership and Managing Change document.

26. Partnership and Managing Change¹⁸ is a Workforce Partnership Council agreement which was originally agreed and published in 2012. It provides an agreed process for public bodies in Wales on how they should consult with trade unions when embarking on any changes or improvements to public services. It goes beyond just consultation on change and encourages and

¹⁵ Using the ONS figures for the mean average hourly gross pay for corporate managers and directors as a proxy

¹⁶ As above

¹⁷ As above

¹⁸ Workforce Partnership Council, [Workforce Partnership Council \(WPC\) Agreement: Partnership and Managing Change](#)

expects early dialogue on ideas and proposals to ensure all matters are considered by all partners.

27. The central requirement of the agreement is that organisations and their managers consult trade unions in advance when embarking on change and improvement. Many public bodies were holding such meetings in advance of the guidance being issued however the agreement sought to strengthen and extend this as a universal provision based on mutually agreed principles..

28. The estimated opportunity costs of an additional half-hour agenda item at a union-management meeting in a public sector body is calculated below. The calculation is indicative and is limited to the local government and local health boards and the largest two groups of devolved public bodies with significant numbers of staff. Because trade union representatives can be from any grade across an organisation it is difficult to assess costs of their participation. In order to understand the upper limits the likely costs have been equated to a senior HR and industrial relations officer.

Table: Working out the estimated opportunity cost of an extra 30 minutes on the agenda of management union meetings in local government and health bodies

Role of person	Number	Hourly rate (£)	Length of time (hrs)	Sub-total (£)
<i>Employer side</i>				
Corporate manager ¹⁹	3	23	0.5	35
<i>Trade union side</i>				
Lay official ²⁰	3	14	0.5	21
Sub-total				56
Employment on-costs (30%)				17
TOTAL				73

29. If we assume that 10 such meetings take place annually in 22 local authorities and 7 local health boards then the estimated opportunity cost,

¹⁹ Using the ASHE category of corporate managers

²⁰ Using the ASHE category 'human resources or industrial relations officer' as a proxy

rounded to the nearest hundred, of discussing major changes at union-management meetings is $73 \times 10 \times 29 = \mathbf{\pounds 21,200}$ to the nearest hundred.

Reporting costs

30. Reporting costs on the implementation of guidance and agreements of the WPC are met by devolved public bodies and the WPC's joint secretariat whose staff are responsible for reporting and collating data relating to the implementation of WPC guidance and agreements.

31. The WPC secretariat was established with the specific intention of supporting such work. It cannot be considered as an additional opportunity cost because it is a core function of the secretariat. It is already accounted for within the costs of the WPC secretariat referred to above.

Costs of the Shadow Social Partnership Council

Running costs and research support

32. Since its formal inception in March 2020, the SSPC has met once a fortnight, in response to the pandemic. It is supported by the WPC joint secretariat, costs for which have already been outlined above.

Opportunity costs

33. Attending the SSPC represents an opportunity cost for attendees.

Table: Working out the estimated opportunity cost for members of the SSPC at each meeting

Number and type of participant	Hourly gross wages (£) x participants x hours	Sub-total (£)
Ten senior full time trade union officials	23 ²¹ x 10 x 2	460
Ten senior employer representatives (director level)	23 ²² x 10 x 2	460
Ten senior Welsh Government officials	23 ²³ x 10 x 2	460
Three Ministers	65 ²⁴ x 3 x 2	390
Four Commissioners	23 ²⁵ x 4 x 2	184
Total		1,954

34. Under its current schedule the SSPC takes place around twenty times a year, therefore the estimated opportunity cost of members' time is $1,954 \times 20 = \text{£}39,080$.

35. Therefore, the total estimated annual opportunity cost of the SSPC is $(39,080) + (39,080 \times 30\%) = 50,804$. The second part of this equation accounts for employment on-costs (pension, national insurance, etc.) Rounded up to the nearest hundred this is **£50,800**.

Benefits – 'do nothing'

36. This option retains the status quo, consequently any additional benefits are limited.

²¹ Using the ONS figures for the mean average hourly gross pay for corporate managers and directors as a proxy

²² As above

²³ As above

²⁴ Senedd Cymru Remuneration Board, [Determination on Members Pay and Allowances: 2020-2021](#)

²⁵ Using the ONS figures for the mean average hourly gross pay for corporate managers and directors as a proxy

Option 2: Statutory Social Partnership Council (SPC)

Description

37. Under option two the Welsh Ministers would create a statutory Social Partnership Council to provide advice relating to:
- The Social Partnership duty and associated guidance
 - The fair work goal and associated duty
38. The SPC would have a responsibility to engage social partners in developing formal advice to Ministers on matters relating to improving public services; social and economic well-being and fair work. The SPC would also consider reports on the social partnership duty, the socially responsible procurement duties and fair work objectives.
39. The SPC would be supported by a secretariat and would be able to draw on the wider expertise of Welsh Government to ensure sufficient capacity to prepare advice which is robust, authoritative, costed, appraised for risk and fully assessed for its potential impacts.
40. Advice from the SPC would relate to the existing powers and functions of Welsh Ministers, including the new social partnership, socially responsible procurement and fair work duty;.
41. One of the roles of the SPC would be to review the Welsh Government's overarching Annual Procurement Report in order to note and/or agree recommendations for policy interventions based on its findings. The SPC would be required by statute to establish a procurement sub-group in order to manage this work.
42. The SPC would receive monitoring reports in respect of the procurement duty, fair work and the social partnership duty and would seek to identify issues by exception to consider.
43. The SPC would provide national leadership to strengthen and extend social partnership working throughout the public, private and third sectors in Wales. It would be part of a system of social partnership able to gather intelligence in a systematic way in order to inform its deliberations and improve the quality of advice to Ministers.
44. Members of the SPC would be appointed by the First Minister through nominations from representative structures, as defined in terms of reference.

Sub-groups

45. The SPC would have the power to form sub-groups to assist with its work. With the exception of the proposed Procurement Sub-group, these would not be specified in legislation. All sub-groups would be chaired by a member of the SPC.
46. One of the sub-groups would be responsible for monitoring the procurement duty. The sub-group would provide reports to the SPC itself – especially where public bodies were found not to be meeting the expectations of procurement policy. Provisions would be made for Welsh Government officials to liaise with the SPC via its procurement sub-group in relation to individual investigations if a public body has decided not to include socially-responsible contract clauses in a regulated major contract, and would also be likely to require it to consult with the SPC in relation to the Welsh Government's statutory guidance.
47. There is the potential to streamline existing structures and realise efficiencies if, following review, Ministers decide to consolidate the work of the Council for Economic Development and Workforce Partnership Council and re-establish these structures as sub-committees of the SPC.

Costs – statutory Social Partnership Council

Transition costs

Consultation

48. As noted under option 2, the Shadow Social Partnership Council is being used to consult stakeholders about the proposed changes. The administrative costs of organising these meetings sit within the Welsh Government's Social Partnership and Fair Work Directorate and the Secretariat. The WPC is also being used for wider engagement with public sector stakeholders. The CfED is being used for this purpose in relation to the private sector. Therefore, there are no additional costs relating to consultation, however the full costs relating to the engagement plan have yet to be finalised.

Start-up costs

49. As noted under option 2, start-up costs are unlikely to be significant because there is already a secretariat which serves the WPC and the SSPC and it is not anticipated that the administrative work load in organising meetings of the new SPC would be significantly higher.

Training costs

50. Members of the SPC would require training and induction to introduce them to their new roles. Relevant training might include:

- social partnership working;
- producing rigorous, costed advice to Ministers, including governance issues;
- procurement policy and practice – including the experience of providing procured goods and services to public authorities;
- public service improvement.

51. The training and induction would be delivered in social partnership. The main cost associated with the training and induction sessions would be an opportunity cost for the SPC's membership and the persons providing the training.

52. In order to make efficient use of time, it is anticipated that training session would take place on the same days as the SPC meets, these will include one three-hour induction session and up to three additional one hour sessions as necessary.

Table: Working out the opportunity costs of these training sessions for the SPC members

Number and type of participant	Hourly gross wages (£) x participants x hours	Sub-total (£)
Nine senior full time trade union officials	$23^{26} \times 9 \times 3$	621
Nine employer representatives (senior manager level)	$23^{27} \times 9 \times 3$	621
Trainer (one days preparation and half day delivery)	(daily rate of £1450)	2175
Sub-total		3,417
Employment on-costs (30%)		373
TOTAL		3,790

²⁶ Using the ONS figures for the mean average hourly gross pay for corporate managers and directors as a proxy

²⁷ As above

53. Rounded to the nearest hundred training costs expressed as an opportunity cost would be **£3,790**.

54. The costs of administering the training would be met by the SPC secretariat.

Running costs

55. The SPC would hit a 'steady state' after eighteen months to two years. The SPC will be established as early as possible following the Bill being made law. It is expected to reach a steady state quickly because it is – for the most part – taking over the running of existing mechanisms.

General and Administration

56. The annual costs for running the SPC are estimated as **£404,000**. The following paragraphs provide the detail. :

Table: Illustrative opportunity costs for members of a two hour meeting.

Number and type of participant	Hourly gross wages (£) x participants x hours	Sub-total (£)
Nine senior full time trade union officials	23 ²⁸ x 9 x 2	414
Nine employer representatives (senior manager level)	23 ²⁹ x 9 x 2	414
Nine Welsh Government representatives (First Minister and up to eight other Ministers or senior officials - director level, split assumes First Minister, two Welsh Ministers and six senior officials)	65 ³⁰ x 3 x 2	390
	23 ³¹ x 6 x 2	276
Sub-total		1,494

²⁸ Using the ONS figures for the mean average hourly gross pay for corporate managers and directors as a proxy

²⁹ As above

³⁰ Senedd Cymru Remuneration Board, [Determination on Members Pay and Allowances: 2020-2021](#)

³¹ As above

Employment on costs (30%)		448
Total		1,942

57. As meetings are anticipated to take place three times a year the estimated opportunity cost is $1,942 \times 3 = \text{£}5,826$ which rounded to the nearest hundred is **£5,900**.

Table: Working out the estimated opportunity costs for running a sub group

Number and type of participant	Hourly gross wages (£) x participants x hours	Sub-total (£)
Nine senior officials per sub-group	$23^{32} \times 9 \times 2$	414
Employment on costs (30%)		124
Total		538

58. It is assumed for this purpose that sub-groups would meet three times a year and that there would be three of them. Therefore their estimated opportunity cost is: $538 \times 3 \times 3 = \text{£}4,842$ or rounded to the nearest hundred **£4,800**.

Premises

59. No extra costs likely – Welsh government estate and that of public sector sufficient as at present.

IT

60. We do not anticipate additional IT costs, as these are already met within existing Welsh Government technology. No new hardware or software is required.

Staffing

61. We anticipate that the current staff compliment would be sufficient to manage the secretariat function under option 2 as part of the wider Social Partnership and Fair Work Directorate. As noted above, the staffing costs for the WPC staff are an estimated **£287,300** a year.

³² Using the ONS figures for the mean average hourly gross pay for corporate managers and directors as a proxy

62. It is not anticipated that social partners would require additional capacity, beyond that already committed to existing arrangements, in order to respond to the new arrangements. The policy intention is to streamline existing mechanisms wherever possible and the opportunity costs that partners currently pay in terms of their staff attending meetings could also be reduced as a result.

Ministerial guidance costs

Producing guidance

63. The cost of producing guidance issued by the Welsh Ministers which flows from the SPC advice would be met from Welsh Government departmental budgets.

64. Each item of advice to Ministers would itself be costed, as part of a robust procedure which mirrors existing civil service processes for assessing policy proposals.

65. There would be opportunity costs for producing this advice for Ministers. For illustrative purposes we provide estimated costs for advice on a simple issue and advice on a complicated issue.

Table: Working out the estimated opportunity cost of producing advice to Ministers on a straightforward matter

Member of staff and grade	Annual wages (£)	Daily rate (£) (divided by 220)	Days	Sub-total (£)
Director – sign off ³³	134,534	612	x 0.5	306
Legal services – Grade 7	80,887	368	x 1	368
Policy lead – HEO	48,655	221	x 5	1,105
TOTAL				1,800 (to nearest hundred)

³³ Using ONS hourly rate for chief executives and senior officials as a proxy

NB. These costs already include employment on-costs.

Table: Working out the estimated opportunity cost of producing advice to Ministers on a complex matter

Member of staff and grade	Annual wages (£)	Daily rate (£) (divided by 220)	Days	Sub-total (£)
Director – sign off ³⁴	134,534	612	1	612
Legal services – Grade 7	80,887	368	2	736
One policy lead – Grade 7	80,887	368	10	3,680
Policy lead – HEO	48,655	221	5	1,105
TOTAL				6,100 (to nearest hundred)

NB. These calculations already include employment on-costs.

66. It is assumed for this purpose that the SPC would produce one item of advice to Ministers on a complex matter in a year and two items on straightforward matters. Therefore, the estimated annual opportunity cost of producing such advice would be $(1,800 \times 2) + 6,900 = \text{£}8,700$.

Implementing guidance – public sector

67. The cost of implementing the guidance issued by Ministers as the result of advice provided by the SPC would fall on devolved public sector bodies in Wales.

68. Existing costs of implementing the current guidance issued by the Workforce Partnership Council are explored above under option 1.

69. Current costs for implementing improvements in public services through social partnership fall on management-union meetings in public bodies. This would continue to be the case under option 2.

³⁴ Using ONS hourly rate for chief executives and senior officials as a proxy

70. Implementation of guidance under option 2 and the associated requirement for public bodies to act in accordance with the social partnership duty, would require all relevant public bodies to devote a proportionate amount of additional resource in order to make a success of this way of working.

71. We expect that all relevant public bodies would require members of their management-union meetings to devote time to supporting implementation. This would differ for each officer but could entail the time required to mutually agree appropriate action and deliver this locally in accordance with guidance. As an illustrative example, one might expect that each officer spends an additional two hours supporting implementation. The opportunity cost of this is estimated below:

Table: Working out the estimated opportunity cost of an extra 2 hours spent implementing guidance in local government and health bodies

Role of person	Number	Hourly rate (£)	Length of time (hrs)	Sub-total (£)
<i>Employer side</i>				
Corporate manager ³⁵	3 x	23.92 x	2 =	144
<i>Trade union side</i>				
Lay union officials ³⁶	3	14 x	2 =	84
Sub-total				228

72. If we assume that 10 such meetings take place annually in 22 local authorities and 7 local health boards then the estimated annual opportunity cost, rounded to the nearest hundred, of extra preparation to support implementation resulting from new SPC guidance is $228 \times 10 \times 29 = \text{£}66,100$, to the nearest hundred.

Implementing guidance – private sector

73. The cost of implementing the guidance issued by Ministers as the result of advice provided by the SPC would also fall on private sector bodies in Wales. This would be on a voluntary basis only.

³⁵ Using the ASHE category 'corporate manager'

³⁶ Using the ASHE category 'human resources or industrial relations officer' as a proxy

74. The draft Bill itself would not provide powers for Welsh Ministers to issue guidance which would be binding on the private sector.

75. Where private sector employers choose to implement voluntary guidance issued by Ministers, it is likely they would ask members of their management-union meetings to devote time to supporting implementation. This would differ for each participant but could entail the time required to mutually agree appropriate action and deliver this locally in accordance with guidance. Because trade union representatives can be from any grade across the organisation, it is difficult to assess average costs. In order to understand the upper limits, the likely costs have been equated to a senior HR and industrial relations officer. As an illustrative example one might expect that each officer spends an additional two hours supporting implementation. The opportunity cost of this is estimated below:

Table: Working out the estimated opportunity cost of an extra two hours implementing guidance in a private company resulting from new guidance under existing regulations which stem from advice from the SPC to Ministers

Role of person	Number	Hourly rate (£)	Length of time (hrs)	Sub-total (£)
Employer side				
Corporate manager ³⁷	3 x	23 x	2 =	138
Trade union side				
Lay union official ³⁸	2	14 x	3 =	84
Sub-total				222

76. Therefore, the estimated opportunity cost of implementing new guidance based on existing regulations for a private sector company is **£300** (including 30% employment on costs and rounded to the nearest hundred). It is not possible to estimate how many companies would volunteer to take this approach. It is possible to estimate a range of costs as follows. If 100 companies took this approach the estimated cost would be **£30,000**.

³⁷ Using the ASHE category 'corporate manager'

³⁸ Using the ASHE category 'human resources and industrial relations officer' as a proxy for a lay trade union official

Compliance and Reporting costs

Managing and reporting on monitoring primarily through the social partnership system and social partnership council

77. Management-union meetings within each public body would be expected to consider the extent to which their institution is meeting the terms of guidance from Welsh Ministers. The opportunity cost for this activity is detailed above. If either the management or trade union side at local level believe that guidance is not being complied with, issues could be escalated for consideration at a sector level (where sector-based social partnership structures exist) and, if the issue remains unresolved, to the SPC via appropriate representatives.

78. Implementation of guidance would be subject to routine monitoring where this is defined within any guidance and exception reports would be prepared by the SPC's secretariat whose costs are described above.

Assessing the effectiveness of public bodies in relation to social partnership using mechanisms contained in the Well-being of Future Generations (Wales) Act 2015

79. Mechanisms contained in the Well-being of Future Generations (Wales) Act 2015 would be used to promote compliance by public bodies, to act in accordance with the social partnership duty.

80. These mechanisms could also play their part in managing non-compliance with any Ministerial guidance which originated through the work of the SPC. It is likely that this guidance would relate to improving public services, social and economic well-being, social partnership and fair work. Therefore, in a broad sense the Act mechanisms could be utilised to monitor the success of policies and guidance in this area.

81. The specific mechanisms are described and costed in paragraphs 383 – 396 of the Explanatory Memorandum to the Act³⁹. The mechanisms are reporting on the national indicators and the sustainable development duties, which are, according to the RIA, to:

- a. Set and achieve objectives that are designed to maximise their contribution to the achievement of the well-being goals consistent with the sustainable development principle;

³⁹ Welsh Government, [Well-being of Future Generation \(Wales\) Bill Explanatory Memorandum, Incorporating the Regulatory Impact Assessment and Explanatory Notes](#)

- b. Publish a statement explaining how and why they would contribute to the achievement of well-being goals in what they do, including when such actions are expected to be carried out;
- c. Report annually the progress the body has made in achieving well-being objectives. (par 384)

82. As these mechanisms are already in place, and it is not anticipated that the SPC and SP duty would add significant additional work in this area, there would not be significant additional cost to public bodies in collating this information. Furthermore, when the Well-being of Future Generations (Wales) Act 2015 was introduced the RIA accompanying the Act made the case that these duties were not adding significant extra cost at that time, because public bodies were already expected to collate such information.

Monitoring annual procurement reports

83. The monitoring and reporting costs for annual procurement reports are estimated in the section of the RIA which deals with procurement.

Reporting on the effectiveness of the SPC itself.

84. The SPC would be required to report on its own effectiveness. There would be an opportunity cost attached to this activity for members of the SPC.

85. The Wales Audit Office and the Welsh Government's Health and Social Services Department have developed a self-assessment tool and guidance for boards⁴⁰. Were the SPC to adopt this model it would involve four steps:

- i. Preparation (agreeing scope, timing and briefing members)
- ii. Individual completion of the self-assessment tool and analysis of responses
- iii. Facilitated workshop and action planning
- iv. Evaluation of the process.

86. There would be an opportunity cost for members in taking part in the evaluation. In terms of step i (preparation), it could be sufficient for the matter to be briefly discussed at a meeting of the SPC itself. Completing the self-assessment tool (step ii) should take no longer than half an hour each, which is a negligible cost. There is an opportunity cost in taking part in a facilitated workshop (step iii). This is anticipated to take half a day.

⁴⁰ The Regional Partnership Board (RPB) Self-Assessment Tool and Guidance was developed in 2019 by an Advisory Group consisting of representatives of Welsh Government, Care Inspectorate Wales, Healthcare Inspectorate Wales, Wales Audit Office, Welsh Local Government Association, Welsh NHS Confederation, Wales Council for Voluntary Action, Association of Directors of Social Services Cymru and NHS Directors of Planning.

Table: Working out the estimated the opportunity cost for the SPC to take part in a facilitated workshop

Number and type of participant	Hourly gross wages (£) x participants x hours	Sub-total (£)
Three senior full time trade union officials	23 ⁴¹ x 3 x 3	207
Three business sector representatives (senior manager level)	23 ⁴² x 3 x 3	207
Three senior public sector employer representative (director level)	23 ⁴³ x 3 x 3	207
Facilitator		400
Sub total		1,021
Employment on-costs (30%)		186
TOTAL		1,207

87. The work of preparing the self-assessment tool, analysing the responses, and organising the workshop would rest with the SPC’s secretariat. This staff time is already accounted for in the RIA.

88. The cost of hiring an independent facilitator for half a day is estimated to cost around £400⁴⁴.

89. Therefore, the total cost of a self-assessment process is **£1,200**, rounded to the nearest hundred. It is anticipated that one self-assessment would take place every year.

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90. End note: Welsh Government staff costs provided from its ‘Average Pay Costs’ document

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⁴¹ Using the ONS figures for the mean average hourly gross pay for corporate managers and directors as a proxy

⁴² As above

⁴³ As above

⁴⁴ The Learning & Development National Procurement Framework (Wales) lists facilitation costs at between £795:00 - £1295:00 per day depending on the subject matter expertise required.

3. Establishment of a social partnership duty

91. 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.

Three options have been considered:

Option 1: Do nothing

Option 2: Use the powers under the Well-being of Future Generations (Wales) Act 2015

Option 3: Establish a statutory social partnership duty.

Table: summary of estimated costs for the three options relating to the establishment of a social partnership duty

£

	Option 1 – do nothing	Option 2 – use existing laws	Option 3 – new statutory duty**
Transition costs	-	2,100	2,100
Annual running costs	0	192,900	192,900
Total costs over 5 years	0	966,600	966,600
Net cost over 5 years	-	966,600	966,600

*These costs are based on the costs for option 3 which are itemised below

** These costs are itemised below

Option 1 – Do nothing

Description

92. There would be no change to legislation under this option. Social partnership would continue to operate within existing frameworks and structures to manage the Welsh Government's social dialogue.

93. Strategic level social dialogue with public sector employers and trade unions would continue through the Workforce Partnership Council (WPC) and its Joint Executive Committee (JEC).

Costs

94. There are no direct costs associated with this option. There may be opportunity costs associated with not achieving alignment with fair work ambitions through social partnership or inconsistency in the approach between public service providers.

Benefits

95. Extant arrangements would remain unchanged; therefore no additional planned benefits are expected to accrue.

Summary

96. Under this option, public bodies would not be required to act in social partnership by engaging trade unions when exercising functions under the Well-being of Future Generations Act. Although non-statutory social partnership has given rise to many examples of positive progress there remains a lack of uniformity in approach, implementation is not universal, and there is lost opportunity as a result.

97. There would be no legislative change required under this option.

98. This option does not meet the objectives of the Welsh Government's White Paper 'A more Equal Wales: Strengthening Social Partnerships' published in November 2019, which sets out proposals for legislation to create statutory social partnership arrangements in Wales with associated provisions that create a framework for driving social equality forward, building on the principles of partnership and collaboration.

Option 2 – Use existing legislation to effect the changes, principally the Well-being of Future Generations Act

Description

99. Section 14 of the Well-being of Future Generations (Wales) Act 2015 requires Welsh Ministers to issue guidance to public bodies about the exercise of functions under Part 2 of the Act and requires those public bodies to have regard to such guidance. Section 51 contains identical requirements in relation to functions under Part 4.

100. Guidance could be developed that in exercising functions under the Act, particularly when setting or taking steps to meet well-being goals, that public bodies should engage trade unions in social partnership.

Costs

101. The costs would broadly be the same as for option 3 considering:
- a. the guidance required public bodies to report in the same way as under option 3;
 - b. implementing the guidance by public bodies would have a similar impact to the cost implications for social partnership described under option 3;
 - c. the cost to the Welsh Government of developing guidance would be similar to that as under the draft Bill and described under option 3;
 - d. the familiarisation costs to public bodies of understanding any guidance issued by Welsh Ministers is likely to be the same as under option 3.

Benefits

102. The benefits would strengthen and build on the well-being duty in the Well-being of Future Generations Act, in particular how public bodies act in accordance with the sustainable development principle

Summary

103. The proposals would not meet the aim of integrating local arrangements into a distinct system of social partnership that is threaded through to a Social Partnership Council to deliver mutual and national fair work ambitions. The costs would be expected to be similar to those identified under option 3. Guidance measures would not ensure a system would be universally implemented.

Option 3 – Establish a social partnership duty (preferred)

Description

104. This option would create a social partnership duty to consult with recognised trade unions in the exercise of specified functions and therefore provide for a consistent system of social partnership contributing to the overall aim of improving public services and economic and social well-being of Wales. There would also be a power for the Welsh Ministers to issue guidance about the requirement to consult with recognised trade unions. It would strengthen and support a system of social partnership which reflects and respects long-standing current arrangements, and create a framework for the development of stronger social partnership where the model is less established. In turn, this would help to advance the fair work ambitions of the Welsh Government and strategic partners,

and reinforce the role of public bodies in contributing to Wales' well-being goals.

105. The proposals include additional fair work duties on Welsh Ministers to:

- report annually on fair work objectives;
- set and publish fair work objectives; *and*
- to take reasonable measures to promote and fair work objectives.

Benefits

106. Under this model, the legislation would provide a foundation for delivery of the well-being goals and the Welsh Government's fair work ambitions and delivering recommendations set out in *Fair Work Wales*. The provisions would ensure there is a strategic social partnership system when coupled with other provisions in the draft Bill.

Costs

107. The transition costs of this option are £2,100 (familiarisation). The annual costs of this option are £192,900. More detail is provided in the paragraphs below:

Costs to Welsh Government

108. Once implemented the direct ongoing costs to the Welsh Government are considered to be:

- (a) consideration of annual reports from each of the 44 public bodies and analysis;
- (b) the potential issuing of guidance on social partnership.

109. There are no specific provisions in the draft Bill which charge expenditure on the Welsh Consolidated Fund.

110. The social partnership duty will affect how public bodies discharge their well-being duty and application of the sustainable development principle established in the Well-being of Future Generations Act (2015). There is no intention:

- a. To change the scope of the examination duty on the Auditor General for Wales (S.15 WFG Act 2015) to assess the extent to which a public body has acted in accordance with the sustainable development principle when setting well-being objectives, and therefore it is not

intended that the draft Bill will have financial implications on the Auditor General for Wales.

- b. To change the scope of the duty on the Future Generations Commissioner for Wales to monitor and assess the extent to which well-being objectives set by public bodies are being met, and therefore it is not intended that the draft Bill will have financial implications on the Future Generations Commissioner for Wales.

111. Public bodies would be expected to report annually to the Social Partnership Council about the operation of social partnership throughout the year. Costs would accrue to the Welsh Government for processing and analysing the reports for consideration by the Social Partnership Council. These are considered to be:

Grade	Annual salary with on costs ⁴⁵ (£)	Daily rate (divided by 220)	Annual cost
Deputy Director FTE 2 days per year	114,241	519	1,038
Grade 7 FTE 5 days per year	80,887	368	1,840
HEO FTE 10 days per year	48,655	221	2,210
EO FTE 15 days per year	37,775	172	2,580
Total			7,668

Rounded to the nearest hundred this estimated cost is £7,700.

The potential issuing of guidance on social partnership

112. It is unlikely that new guidance will be issued frequently. New or updated guidance will not necessarily be issued in response to each annual reporting cycle. Therefore, the analysis illustrates the potential cost of developing a single piece of statutory guidance.

Grade	Annual salary with on costs ⁴⁶ (£)	Costs per days per year (divided by 220)	Annual cost
Deputy Director FTE 5 days per year	114,241	519	2,595

⁴⁵ Welsh Government 2020 salaries

⁴⁶ Welsh Government 2020 salaries

Grade	Annual salary with on costs⁴⁶ (£)	Costs per days per year (divided by 220)	Annual cost
Grade 7 FTE 15 days per year	80,887	368	5,520
HEO FTE 20 days per year	48,655	221	4,420
EO FTE 25 days per year	37,775	172	4,300
Total			16,835

Rounded to the nearest hundred this estimated cost is £16,800

A duty on Welsh Ministers to report annually on fair work objectives

113. Costs are estimated based on likely timescales for preparing a report. Fair work objectives are not currently set and therefore basic assumptions have been made about allocated resources. As time progresses more objectives to report on are likely to be added possibly raising costs, whilst there would also be a baseline to report against, increasing efficiency in the reporting process.
114. Implications for reporting and associated costs would also need to be factored into the setting and publishing of a fair work objective when it is set.

Grade	Annual salary with on costs⁴⁷ (£)	Costs per days per year (divided by 220)	Annual cost
Deputy Director FTE 5 days per year	114,241	519	2,595
Grade 7 FTE 15 days per year	80,887	368	5,520
HEO FTE 20 days per year	48,655	221	4,420
EO FTE 25 days per year	37,775	172	4,300
Total			16,835

Rounded to the nearest hundred this estimated cost is £16,800

A duty on Welsh Ministers to define and publish fair work objectives

⁴⁷ Welsh Government 2020 salaries

115. The development of specific fair work objectives would be a matter on which the SPC would provide advice to Welsh Ministers. Costs associated with the SPC work programme are included with the RIA attached to those provisions. Therefore, estimated costs in this assessment are limited to those incurred by the Welsh Government. The costs are illustrative only until an understanding of the scope and content of fair work objectives can be established.

Grade	Annual salary with on costs ⁴⁸ (£)	Costs per days per year (divided by 220)	Annual cost
Deputy Director FTE 5 days per year	114,241	519	2,595
Grade 7 FTE 15 days per year	80,887	368	5,520
HEO FTE 20 days per year	48,655	221	4,420
EO FTE 25 days per year	37,775	172	4,300
Total			16,835

Rounded to the nearest hundred this estimated cost is £16,800

116. Costs of compiling, drafting and publishing a report once objectives are set are estimated to be **£1,600**. This includes the costs for compiling, drafting, clearing and translating a report.

Grade	Annual costs	Daily costs	Annual cost
Deputy director 1/2 day (sign off)	114,241	519	260
HEO, 5 days (writing)	48,655	221	1,105
HEO 1 day (translating)	48,655	221	221
Total			1,586

⁴⁸ Welsh Government 2020 salaries

A duty to take all reasonable measures to pursue and promote fair work and pursue fair work objectives

Costs to Public Bodies

117. The costs to public bodies are considered to be:
- reporting costs;
 - familiarisation costs;
 - additional costs of social partnership discussions on top of extant negotiating structures.

Reporting costs

118. The activities associated with reporting are likely to involve an administrative officer collating information about the exercise of social partnership throughout the year and producing a report, then sending it to the Welsh Government.
119. The provisional ASHE data for 2020 shows the median gross hourly earnings in Wales for administrative occupations: government and related organisations is £12.35.⁴⁹ Eurostat data for 2020 shows UK non-wage costs were approximately 30%, giving a total hourly cost of £16.05.
120. There are 44 public bodies captured by the social partnership duty.
121. The cost is estimated to be £16.05 (total hourly cost) x 3 (number of hours) = £48.15 (cost per organisation). This cost x 44 (public bodies) = £2,118.6 (total cost). Rounded to the nearest hundred this is **£2,100**.

Familiarisation

122. Assuming the familiarisation activities take approximately three hours of an officer's time, then on the basis of the same calculation as reporting the familiarisation cost per public sector organisation would be around £48.15 (£16.05 x 3 hours). Based on the number of public bodies identified above, the total one-off familiarisation cost to the public sector is estimated at £2,118.60. Rounded to the nearest hundred this is £2,100.
123. Familiarisation may also be required should Welsh Ministers issue guidance on the operation or reporting of social partnership. Guidance would be anticipated to be issued on, at most, an interval of an annual cycle, but in practice it is more likely to be issued much less frequently. This is

⁴⁹ ASHE provisional data 2020 - Wales, Administrative occupations: Government and related organisations

because if guidance is issued, it is likely to be a response to the annual reporting cycle.

Additional costs of social partnership within public bodies

124. There are currently trade union and employer structures across the 44 public bodies that would be subject to the social partnership duty. These organisations have structures in place to undertake collective bargaining between trade unions and employers. It is anticipated that new structures would not be created, but that social partnership working and consultation would be added to current arrangements.
125. This would involve additional preparation time and additional time in meetings for trade unions representatives and employers.
126. Assumptions are made that a social partnership meeting takes place four times per year, that there are three attendees from the trade union side and three attendees from the employer side. For cost purposes assumptions are also made that the employer side includes a senior HR and industrial relations officer. Because trade union representatives can be from any grade across the organisation it is difficult to assess costs of their participation. In order to understand the upper limits the likely costs have been equated to a senior HR and industrial relations officer.

Number and position	Hourly gross wages x participants x hours x meetings/year	Sub-total
Three trade union officials ⁵⁰	14 x 3 x 3 x 4	504
Three public sector employer representative ⁵¹	14 x 3 x 3 x 4	504
Sub total		1,008
Employment on-costs (30%)		302.4
Total per organisation		£1,310.4
Total to public bodies (44)		£57,657.60

Rounded to the nearest hundred this is £57,700

Costs to other organisations

127. There are not considered to be costs to other organisations in the private and the third sector.

⁵⁰ Human Resources and Industrial Relations officers – ASHE 2020 provisional data

⁵¹ As above

Summary

128. Option 1 would not change the current system and social partnership would continue in an inconsistent way. It would not meet the objective of a legislative framework for social partnership.
129. Option 2 could go some way towards a system-based approach. However; we consider this option would not create a coherent social partnership system that has a thread through local, sectoral and national arrangements that are aligned at a strategic, tripartite level between Government, trade unions and employers.

Preferred Option

130. Option 3 is the preferred option as it would provide for a social partnership system that is integrated and aligned with the overall ambition and the proposals for a statutory Social Partnership Council as a system leader.

Additional Costs

131. It has not been possible to calculate the additional costs of the potential outcomes of the framework established by the proposed legislation, although estimates are made as to the likely frequency that the provisions in the draft Bill would result in legislative intervention. This is because the outcomes rely on multiple parties working across different levels, with individual outcomes per public body, similar to outcomes under the Well-being of Future Generations Act 2015.
132. Specifically, additional proposals refer to fair work duties on Welsh Ministers, including requirements around the fair work goal. This is a wide ranging duty that may or may not have implications for public bodies over and above other duties, for example the duty on the Welsh Ministers to promote sustainable development in the exercise of its functions.

Fair work duties

There are challenges in clearly defining the expected costs on Welsh Government concerning the fair work duties set out in the draft Bill and described in the Explanatory Memorandum.

Component: Duties on Welsh Ministers to set fair work objectives in consultation with the Social Partnership Council, take action to meet those objectives and report annually on action taken and progress made.

133. This provides potential for a wide range of matters to be covered by the Welsh Ministers' fair work objectives and actions. This presents challenges for costing purposes.
134. Objectives will be set by the Welsh Ministers in consultation with the SPC and it would not be appropriate to pre-empt this. However, to assist in illustrating the processes and possible costs, the following indicative examples are set out which primarily relate to the administrative costs to Welsh Government of supporting the delivery of such objectives.
135. Fair work objectives are not currently set and therefore basic assumptions have been made about allocated resources. As time progresses more objectives to report on are likely to be added, possibly raising costs, whilst there would also be a baseline to report against, increasing efficiency in the reporting process.
136. Implications for reporting and associated costs would also need to be factored into the setting and publishing of a fair work objective when it is set.

Example 1

Sample objective: Improving and supporting opportunities for workers to work remotely and flexibly across Wales and in ways which improve well-being, work life balance, and public service delivery.

Policy action: Development of 'national principles' for remote working, including consideration of the support employers and workers may require to effectively and safely operationalise remote working.

Delivery characteristics: Identify and build consensus on the workforce implications of a remote working policy and steps that ensure the approach to remote working is in line with fair work.

Costs: Welsh Government Staff – Deputy Director and Grade 7. Total time 1 day a month (each) = £10,664 annual estimated opportunity cost (Calculation based on average pay costs 2020-21)

Example 2

Sample objective: Increasing access to work based learning provision to help develop a more productive and effective workforce and improve opportunities for progression.

Policy action: Setting an agreed target for increasing the number of hours of work based learning provision.

Delivery characteristics: Agreement of social partners, securing support of training providers and integration into Welsh Government's broader skills agenda.

Cost: WG staff time - Deputy Director, Grade 7 and SEO. Total time 2 days a month spread across the three grades = £10,120 (calculated based upon an average of staff costs).

137. Reporting would enable feedback to be available to the Welsh Ministers which would aid their future objective setting, ensuring that it is evidence-based and in areas of clear need where interventions would add value.
138. There would be an **opportunity cost** with the time of Welsh Ministers in considering the content of the SPC reports, any supporting briefing and possibly responding to Senedd questions. It is not possible to quantify this time as it would depend on the nature of the report content and any high-profile incidents or concerning trends which can be expected to generate questions and added scrutiny. This cost is therefore unknown at this stage.
139. Additionally, there would be an opportunity cost to the Welsh Government based on the amount of **staff time** required each year to collect information, prepare and draft papers and brief Ministers in relation to the duty. This document provides an indication of costings for scheduled meetings of the SPC.
140. Whilst we have limited our costings to a Welsh Government context, the cost of implementing the guidance issued by Ministers as the result of advice provided by the SPC would be expected to fall on or be absorbed into working arrangements by devolved public sector bodies in Wales, as part of their role in statutory Social Partnership.

4. Require specified public bodies to undertake socially responsible procurement

Option 1 – do nothing

Option 2 – introduce new, narrower legislation with a socially responsible procurement duty.

Option 3 – preferred option – introduce new, wider legislation with a socially responsible procurement duty (option 2) plus contract management duties and mechanisms to address compliance.

Table: summary of estimated costs for the three options to require specified public bodies to undertake socially responsible procurement as part of their duty to work in social partnership

£

	Option 1 – do nothing	Option 2 – new narrow legislation	Option 3 – new wider legislation
Transition costs	-	162,100	162,100
Annual running costs	5,341,000	5,744,800	11,480,100
Total costs over 5 years	26,705,000	28,886,100	57,562,600
Net costs over 5 years	-	2,181,100	30,857,600

A list of bodies to be covered by the socially responsible procurement duty within the draft Bill is set out in Annex 1 of this document, referred to in the draft Bill as “*contracting authorities*”, and for the purposes of this assessment we have attempted to predict which specific duties are likely to affect each body. This is based on the latest available spend data, annual/financial reporting and tendering data available via the Sell2Wales website.

Option 1 – not recommended – do nothing.

Description

141. This option represents the status quo. Existing procurement policy priorities – and those planned under the incoming Wales Procurement Policy Statement would be supported by Welsh Government’s procurement policy team.
142. Under this option there would be no additional procurement duties within the draft Bill. Delivery of and support for existing procurement policy and associated initiatives and projects would be led by a small team within Welsh Government’s Commercial and Procurement Directorate. The costs for this are set out under Table 1.1 below. This option **would represent no additional cost.**
143. This option **would also not incur any additional benefits** to either the wider public sector or private sector. There are also unquantifiable opportunity costs in not synchronising procurement policy development with Social Partnership through the draft Bill, namely:
 - missed opportunity to provide further challenge to public sector procurement practice;

- missed opportunity for greater cohesion and consistency between closely related policy areas;
- no legislative platform for Welsh Government to drive policy outcomes;
- missed opportunity to use annual reporting for data driven intervention and policy development;
- missed opportunity to mandate transparency in supply chains:
- missed opportunity to strengthen mechanisms for addressing concerns raised about procurement and contract management activities; and
- missed opportunities to promote forward planning and greater focus on socially-responsible outcomes.

Table 1.1 – for information - breakdown of current Welsh Government staff administration costs for Commercial and Procurement Directorate (not additional costs).

Costs for Commercial and Procurement Directorate		
Commercial Procurement	2020	
	Total	
Grade	Headcount	Cost
Director	1	176,000
Deputy Director	1	114,000
Grade 6	2	190,483
Grade 7	6	467,051
SEO	15	887,135
HEO	12	558,737
EO	5	178,926
TS	2	57,523
Programme Sub-Total	44	2,629,855
Grade 6	4	380,967
Grade 7	6	467,051
SEO	14	827,993
HEO	15	698,422
EO	7	250,496

TS	3	86,285
DRC Sub-Total	49	2,711,213
Directorate Total	93	5,341,068

N.B. based on actual existing staff costs and not average grade rates.

Option 2 – not recommended - introduce new, narrower legislation with a socially responsible procurement duty.

Description

144. Under this option certain bodies, defined as contracting authorities in the draft Bill would:
- a. apply the socially responsible procurement duty (as set out in the draft Bill and supplemented in Statutory Guidance) to all public procurement as defined in the draft Bill;
 - b. set objectives for achieving the socially-responsible procurement goals, and take all reasonable steps to meet these objectives for all of their 'prescribed procurements' – all construction contracts over £2m, all outsourced services contracts plus any contracts so specified in regulations. The current policy intention is that the Welsh Ministers will, in regulations, prescribe contracts for goods and services above a threshold of £122,976;
 - c. publish procurement strategies, undertake annual reporting, publish a contracts register, and publish a forward look.
145. Additionally, Welsh Ministers would publish an annual report, to include a summary of the annual reports received and of any procurement investigations.
146. Most public bodies would already have a procurement strategy (Value Wales' 2013/14 Fitness Checks programme found that all but one local authority in Wales had a strategy in place), but the socially responsible procurement duty would make this a legal requirement, along with the duty to prepare an annual report on its public procurement if it has awarded any prescribed procurements, and to publish these documents. Objective-setting would be a new activity, but would be carried out within the context of developing strategies. Care will be taken to ensure that these requirements are proportionate, so smaller bodies with lower annual spend will not find the process overly burdensome.

147. In this option a summary of these objectives, strategies and reports would be reviewed by the Social Partnership Council and its procurement sub-group. Compliance would be achieved only through greater transparency and a refocusing of policy expectations and guidance.

Bid costs

148. A likely result, particularly in the short term, of increased focus on socially-responsible procurement outcomes would be an increase in bid prices. This would be the case if additional requirements are placed on business without careful consideration to ensure that requests are proportionate and focussed around areas of higher risk. Developing high-quality statutory guidance, and providing support to procurement and contract management staff across Wales would be key to achieving benefits in the most cost-effective manner. The overall long-term costs of delivering fair work, focusing on environmental outcomes and developing local economies may well be reduced as a result of increased economic equality, improved public services and environmental benefits. This is in line with the goals and ways of working of the WFG Act.

Living Wage

149. With an increasing focus on Fair Work, another likely additional cost would be incurred through increased adoption of the Real Living Wage throughout supply chains. It should be noted that under current procurement law payment of the Real Living Wage cannot be made a contractual requirement. As in Scotland, some bids are currently scored on a set of indicators about Fair Work which includes payment above the Real Living Wage. This is current practice in a number of public bodies across Wales, particularly those that are already Accredited Living Wage employers, but there is significant opportunity for improvement.
150. Any increase in the uptake of the Real Living Wage as a result of the socially responsible procurement duty would clearly benefit those employees in supplier organisations who are paid below this level. There are also potential benefits to the Exchequer and Welsh Government in the form of higher tax receipts and a reduction in benefit payments (although these would have to be balanced against a potential reduction in corporation tax receipts), as well as a wider set of health and social benefits from reducing poverty. Cardiff Business School has been undertaking research into the impact of a wider uptake of the Real Living Wage in the context of the Welsh economy, but it is not possible to predict the likely increase in numbers of people seeing their pay uplifted as a

result of this draft Bill, and so the impacts cannot be quantified. It should be noted that the Scottish Government has reported a significant increase in payment of the Real Living Wage through procurement as a result of their Sustainable Procurement Duty contained in the Procurement Reform (Scotland) Act 2014.

151. While there would be a benefit to employees, pay increases (for example to levels above the Real Living Wage) would result in a corresponding increase in the operating costs of those public sector suppliers currently paying lower wages to workers delivering contracts that would be covered by this draft Bill. The impact on the Welsh economy would depend on the response of those organisations to the cost increase. It is possible that some businesses may opt not to bid for contracts covered by this draft Bill in the future, particularly if supplying goods and services to the Welsh public sector represents a relatively small part of their business. Other businesses may respond to the cost increase through one (or a combination) of the following routes:
 - a) by absorbing the cost increase by accepting a reduction in profits;
 - b) by reducing operating costs, for example by reducing the number of employees or the number of hours they work;
 - c) by seeking to pass the cost increase on to customers in the form of higher prices.
152. If supplier prices were to increase then the volume of goods and services which could be procured with a fixed £6.4 billion public sector procurement budget would decline.
153. However, there are also (again unquantifiable) benefits to business in increasing pay - for example in reduced sickness and staff turnover, improved morale and productivity. If businesses choose to respond by absorbing the cost increase this would represent a re-distribution from business owners/shareholders to a (typically) lower income group. The Welsh Government is working with academic and other stakeholders to establish the extent to which these cost benefits can be quantified.
154. The post-implementation review would include an assessment of the economic impact of the socially responsible procurement duty.

Staffing Costs

155. Cost under this option would largely be incurred from Welsh Government resources, required for support and monitoring delivery, and those arising

from reporting by the wider public sector. Cost would also be incurred by the wider public sector in meeting its duties around reporting and publishing strategies. Costs would be higher in the initial years and decrease over time.

Costs to the Welsh Government

156. Some costs for supporting Option 2 as noted above are already covered by Commercial and Procurement Directorate’s budget and as such **are not additional costs that would be incurred due to the draft Bill.** Collation of annual reports from data sets could be absorbed into existing roles, and therefore would not represent additional quantifiable cost.
157. The majority of costs to the Welsh Government under this option arise from the need for augmented resource, particularly in the first couple of years, to support implementation of statutory guidance, and collection, processing and analysis of annual reports. It would also include the costs of publishing the Welsh Government’s own Annual Report which would set out achievements for each preceding year and make recommendations for future years.
158. Tables 2.1 and 2.2 set out estimated costs for this additional resource and associated programme, required to support delivery under Option 2. In compiling these estimates, consideration has been given to how the Scottish Government undertook broadly the same functions to support approximately 110 bodies, which according to colleagues in the Scottish Government’s Procurement and Property Directorate, has been proportionate and effective. Option 2 would also require effective project planning to underpin implementation of the new socially responsible procurement duty. This would be undertaken by the additional staffing noted in Table 2.1.
159. In order to inform and upskill the wider public sector, implementation of Option 2 would require additional activity such as publication of statutory and supplementary guidance, training sessions, one-to-one meetings and webinars, communications, and regional awareness sessions. Estimated costs for these activities are given in Table 2.2.

Table 2.1 - additional costs to be incurred for enhanced staffing to support ongoing delivery of Option 2 (annual costs)

	£	£
Grade	Monthly cost	Annual staff cost
G7 x 0.5	3,370.50	40,443.50

SEO x 1	5,223	62,678
HEO x 2	8,110	97,310
Team Support x 0.5	1,281	15,372
Total staff costs	17,984.50	215,803.50

Table 2.2 – estimated additional programme costs to support implementation of Option 2 (implementation costs)

£

Policy	Cost
Procurement Advice Note	Staff time only
Development of statutory guidance	5,000
Procurement Bulletin	Staff time only
Regional awareness sessions	10,000
Staff travel to meet heads of procurement	15,000
Review and reporting (annually)	25,000
Annual webinars	2,000
Post-implementation review (year 3 or 4)	25,000
Total programme costs	82,000

Costs to the wider public sector

160. Most public bodies in Wales already have procurement strategies in place. Fitness checks undertaken by Value Wales in 2014 indicated that at the time, 21 local authorities had a procurement strategy, so additional costs in this area would be fairly minimal. There would be some upfront costs in setting objectives and further developing socially-responsible procurement processes. However good practice already requires inclusion of many of these types of questions and contract conditions as tenders are advertised and awarded, and any additional time costs would largely be in the early stages as new guidance is put into practice.
161. Option 2 would place a duty on public bodies to produce annual procurement reports if they have awarded a 'prescribed contract'. Any

additional workload here would also be minimal due to existing internal reporting around tender processes, and current reporting on the WFG Act which are likely to capture much of the data required. However, staff would be required to focus on specific outcomes which may take more time and could cause duplication of effort if not managed carefully, particularly in the first year. Annual reporting would require completion of data templates provided by the Welsh Government in statutory guidance. Any anticipated tangible costs would be incurred through Heads of Procurements' and other staff time in collating information and producing the annual report. This is set out in Table 2.3.

162. There is likely to be a cost associated with staff attendance at awareness and training sessions, and this is set out in Table 2.4.

Table 2.3 – costs incurred by collating data required for reporting on socially responsible procurement outcomes (annual costs)

	£		£
Grade	Approximate daily rate (monthly rate/20)	Time	Pro rata cost
Head of procurement x 100	337.05	2 days	67,410
Senior procurement official (SEO equivalent) x 100	261.15	2 days	52,230
Total estimated cost			119,640

N.B. proxy rates equivalent to Welsh Government G7 and SEO are used for staff pay rates due to variances across the public sector, and differences in job titles.

Table 2.4 – costs incurred by public sector for staff time at awareness and training sessions (implementation costs)

	£		£	
Grade		Approximate daily rate (monthly rate/20)	Time	Pro rata cost
Head of procurement (G7 equivalent) x 100		337.05	1 day	33,705
Senior procurement official (SEO equivalent) x 100		261.15	1 day	26,115
Procurement official (HEO equivalent) x 100		202.75	1 day	20,275
Total estimated cost				80,095

N.B. An average is used for staff pay rates due to variances across the public sector, and differences in job titles.

Costs to the private sector

163. Any costs incurred by the private sector may arise from increased expectation on delivering socially-responsible procurement outcomes. Examples would be wider use of sustainably-sourced materials, and staff receiving more training and better terms and conditions of employment, including uplift to the Real Living Wage (please see text below under option 3 for a further discussion of this). Other costs may be incurred from staff time in attending additional training and support sessions that could be made available through Business Wales, for example. These costs are difficult to estimate, because it is not possible to know how many businesses currently provide goods, services or works to the contracting authorities covered by the draft Bill, what proportion of these would be required to focus on particular issues, to what extent they would wish to make use of available training, awareness sessions or one-to-one support, or how many employees (and at what level) would be required to attend.

164. As with Options 1 and 3, officials from Business Wales have indicated that support would be made available to help firms gear up to respond to requirements placed upon them by the socially responsible procurement duty within the draft Bill.

Costs in the longer term

165. While there would be additional costs to all parties in the shorter term in adjusting to new ways of working and reporting processes, in the medium term there is potential for Option 2 to cost less than the status quo (Option 1) due to the aim of simplifying the current set of policy asks and reporting mechanisms.

Benefits

166. The benefits associated with this option relate to a more robust process for promoting socially-responsible outcomes, such as those delivered through more ethical employment practices in supply chains. This would be achieved by placing a duty on contracting authorities to have regard to statutory guidance, and building in transparency and reporting requirements. A policy prioritisation tool would be needed to focus efforts where maximum value can be achieved through policy implementation. Anticipated benefits include:
- simplification of policy expectations on procurement;
 - some opportunity to deliver wider social objectives as a result of greater transparency requirements;
 - improvements in pay and fair work, benefiting the economy through increased tax revenues, money retained in local economies, and decreased benefits payments;
 - improved transparency of supply chain activity, leading to increase in good practice and potential for interventions by commercial managers;
 - better understanding of ethical employment, including sharing good practice, through an annual reporting process; and
 - some opportunity to improve public procurement capability to deliver improvements to public services, reduce inequalities, and deliver well-being objectives.
167. The benefits for businesses and organisations in supply chains could be significant in all respects, including financial benefits through improved productivity of staff, improved service and higher sales etc. The benefits to Wales in the long term are also impossible to quantify but are likely to be

very considerable, given the scale of procurement spend within Wales each year.

Summary of costs (rounded to the nearest £100)

£

Summary of costs	
Transition	
Table 2.2	82,000
Table 2.4	80,100
Sub-total	162,100
Annual	
Table 2.1	215,800
Table 2.3	119,600
Sub-total	335,400
Total	497,500

168. The estimated implementation cost for this option is therefore **£162,100**, with an estimated annual cost of **£335,400**.

Option 3 – preferred option – introduce new, wider legislation with a socially responsible procurement duty (option 2) plus contract management duties

Description

169. Under this option, the contracting authorities set out in option 2 would fulfil the same duties described in that option, and would also be required to:
- meet a contract design/award/management duty **for construction contracts over £2m** in relation to the inclusion of social public works clauses in such contracts as detailed in the draft Bill including their application throughout the supply chain, and an Exception Reporting process where necessary;
 - meet a contract design/award/management duty **for outsourcing services contracts** in relation to the Code of Practice on Workforce Matters 2014 (the Two-tier Workforce Code) and the inclusion of social public workforce clauses in such contracts, including their application throughout the supply chain, and meet an Exception Reporting process where necessary.

170. Welsh Government would be required to:
- support the procurement sub-group of the Social Partnership Council;
 - establish a new investigative power for Welsh Ministers, through the planned establishment of a new feedback service; and
 - publish model contract clauses and guidance.
171. In summary, **whilst delivering the same benefits as those under option 2, this option would place additional duties on contracting authorities so as to improve the likelihood of their compliance.** This option would focus attention on achieving socially-responsible outcomes by including relevant clauses within contracts, passing these on through supply chains, and putting processes in place to monitor these arrangements through supply chains and report outcomes. These plans would include an Exception Reporting process to be initiated during the pre-procurement planning phase when an organisation decides it does not intend to follow these processes for a particular procurement.
172. There would be costs associated with the Exception Reporting process. It is difficult to estimate how often an Exception Notification would be received by Welsh Government. To deal with reports in a timely manner, we envisage the procurement sub-group of the Social Partnership Council would meet once a year to review the Welsh Ministers' Annual report, and additionally on up to five occasions to discuss Exception Reports and other matters. This may include both scheduled and unscheduled virtual meetings, and costings for these are included under the Regulatory Impact Assessment costs for the Social Partnership Council. Any staff costs are reflected in table 3.2 below, as this work would be absorbed by staff dedicated to supporting options 2 and 3.
173. This option would also include a power for the Welsh Ministers to investigate the operation of public procurement in contracting authorities. This is likely to include a new feedback service: a mechanism for businesses, social partners and other organisations to report or escalate concerns around potential non-compliance with the duties under the draft Bill. This, along with providing other dedicated support to the Welsh public sector, would incur additional cost to the Welsh Government. This is explored further below.
174. Under this option a post-implementation review would be undertaken after a period of three or four years, in order to assess whether the critical success factors are being met, and the extent to which the socially responsible procurement duty is achieving its aims. This review would include a review of the scope of the contracts covered by the Bill.

Option 3 Costs

Costs to Welsh Government and the wider Welsh public sector

175. Option 3 includes all of the costs set out in Options 1 and 2 above and further costs to support the additional contract management duties, Exception Reporting mechanisms, and development of a new feedback service.

Socially-responsible contract clauses in major construction contracts and their supply chains

176. Whilst the long-term objectives are for improvements to be made in contracts across all sectors, one of the focuses in this draft Bill is on large construction contracts, with values above £2m, and the cost estimates have been calculated on this basis. This option would require an augmented approach to contract management to monitor contractor performance and compliance throughout supply chains to ensure that specific objectives are being met.
177. An increase in socially responsible procurement would require better resourced and more robust contract management. However, the scale of this challenge is unknown across the public sector and progress will have to be made over time. Consequently, the increased costs of improved contract management more generally have not been included in this assessment. It is not possible to assess the extent to which each contracting authority included in the draft Bill already resources this vital function across each of its contracts; consultation has indicated that this would require augmented support over time.
178. Whilst costing contract management with any great degree of accuracy is difficult due to differences between and within organisations, Welsh Government officials have undertaken work to estimate costs for large scale, complex and high-risk projects. The model used provides a figure of 1-2.5% to be allowed for within construction project budgets, based on market research and National Audit Office figures. To allow for existing contract management arrangements, we have included a figure of 0.5% to estimated contact management costs. Contract management should be expected to be treated as a joint responsibility in many areas, and not something that can be transferred entirely (along with associated risks) to main contractors.
179. We have used this model to extrapolate potential costs for construction (set out in Table 3.1). This provides a reasonable approximate worst case scenario additional cost, for those organisations that are not currently including socially-responsible KPIs and metrics within the regular contract

management of their construction contracts. Many bodies would not need to spend anywhere near this maximum, as many elements of this approach would already be delivered in-house.

- 180. This extrapolation is based on the proportion of spend on construction as evidenced by Contract Award Notices published through Sell2Wales, which was transposed onto actual spend during financial years 2017-2019 provided to the Welsh Government by third part spend data analyst Atamis.
- 181. Construction figures from Sell2Wales include framework agreement awards, which would be spent over several years as projects develop. Figures provided by Atamis indicate a total construction spend of £3.3bn over the last three years, with spend during 2018/9 alone standing at £1,125,007,885, approximately 98.5% of which are on above contracts over £2m.
- 182. Estimated costs for this are set out in Table 3.1.

Two-tier Workforce Code

- 183. There is potential for further costs associated with Exception Reporting on the application of Two-Tier Workforce Code. There are very few instances each year of an organisation covered by the existing Two-tier Code outsourcing a service, and the Code is normally applied in these circumstances. The costs of this process are included within the Exception Reporting provisions described above and the costs below. There could be some higher employment costs associated with a more careful monitoring of the on-going application of the Code’s contractual provisions, but as this Code is already in place in Wales, it is difficult to estimate the scale of divergence from its provisions.

Table 3.1 – additional costs incurred through strengthened contract management in construction (annual costs)

Sector	Estimated annual cost based on good practice
Construction	£5,625,000

N.B. based on the model outlined above. The actual costs would rely largely on factors such as how contract management is risk assessed and structured within each contracting authority, use of existing frameworks, staff capacity and capability, whether contract management is outsourced etc.

A new feedback service to support Welsh Ministers' powers of investigation

184. A new feedback service under this option may allow investigations to take place where there are suggestions that contracting authorities have failed to uphold their statutory duties under the draft Bill. Based on evidence from the Scottish Government and the UK Government's Public Procurement Review Service (PPRS), many of the complaints received would be likely to focus around payment issues; however, even in high volume these complaints represent low amounts of staff time. The majority of staff time within the PPRS is taken up with more complex cases, which are dealt with by two full-time case officers, who also undertake spot checks; a way of ensuring that public procurement policy is being implemented effectively.
185. The PPRS also publishes its findings periodically. The policy expectation is that the proposed feedback service would operate in a similar fashion and would also ensure appropriate policy interventions can be made where necessary. This role could be undertaken by the additional staff set out in table 3.2, and publication of its findings would be via Welsh Government communications officials and its own website, representing negligible additional cost. Some investigations of complaints regarding tender processes are already undertaken by policy officials within Welsh Government and this would continue, with the additional resource noted in table 3.2 working on complaints around supply chain issues and payment brought about as a result of a potential new service set up to support the draft Bill. More detailed investigations of procurement activity within specific contracting authorities may be undertaken from time to time, for example based on accumulated evidence, but these are expected to be included in the resources listed below.

Table 3.2 – additional costs to be incurred for enhanced staffing to support implementation of Option 3 (annual costs)

	£	£
Grade	Monthly cost	Annual staff cost
SEO x 1	5,223	62,678
HEO x 1	4,055	48,655
Total staff costs	9,278	111,333

Costs to the private sector

186. The extent to which businesses would be affected by the socially responsible procurement duty under the draft Bill would depend on the scope of the contracts covered by the draft Bill. In its response to the Welsh Government's White Paper A More Equal Wales: Strengthening Social Partnership, the Federation of Small Businesses Wales noted:

Insofar as we are able to make an assessment based on what has been presented, we do not foresee any additional costs to businesses. In principle if the reforms are implemented in a way that understands the role of SMEs. However, there could be opportunity costs in terms of local community wealth and employment if the criteria is too rigid and prevents firms progressing towards higher standards on issues such as fair work.

187. Support would be made available through the Welsh Government's flagship Business Wales programme to help businesses gear up for any changes made as a result of the socially responsible procurement duty. Staff noted under Table 3.2 would work with Business Wales to ensure that businesses are able to mitigate potential impacts whilst maximising opportunities for delivering Social Partnership objectives.
188. Another area of cost is contract management. The costs referenced above under Table 3.1 could be shared between clients and the private sector, and the split would vary for each organisation based on a multitude of factors such as risk management appetite, maturity of the commercial function, resource available, budgets, and contract terms.
189. Audit of supply chain behaviours would also need a new approach by both contracting authorities and the private sector. We are working with construction industry representatives to identify how this can be progressed with minimal impact on cost and administrative burden. This may be an area where allowing for third-party accreditation could present the optimal solution, such as the approach already established in health and safety. This would mean additional cost sunk into contract delivery and/or tendering processes, which is unquantifiable at this time.

Benefits

190. Option 3 would deliver against recommendations made by multiple sources as described within the consultation document.
191. This option would introduce a lens through which any new policy outcomes to be delivered through public procurement in future are assessed for inclusion in statutory guidance. Many of the policies that will

be covered by statutory guidance are already well-established and so this option may not represent a significant change in direction for public procurement practitioners, although there will be areas for development particularly around fair work and environmental objectives. It represents a change to simplify existing commitments and introduce a process by which new objectives are considered for inclusion in future in the context of Social Partnership.

192. Because of the anticipated need for forward procurement planning and establishing a basis in law for utilising the leverage of public procurement to deliver policy outcomes, this would help make public procurement a strategic function, which is a stated ambition of our stakeholders.
193. This would give the profession a more robust role in policy delivery and scrutiny, in line with feedback from stakeholders, and a specific recommendation by the 2012 McClelland Review Maximising the impact of Welsh Procurement Policy ⁵² for a “mandatory duty for funded bodies to adopt Welsh Government procurement policy [which] should include delivering the wider benefits of economic, social and environmental impacts.” This recommendation has been reiterated in several more recent reports.
194. Option 3 would give procurement more leverage to help deliver against the Economic Action Plan, the decarbonisation agenda and the well-being objectives of public bodies under the Well-being of Future Generations Act 2015.
195. Benefits associated with statutory guidance as set out in option 2 would also arise.
196. The proposed contract management duties would represent the first time in the UK that such duties are placed on a statutory footing. It would, when in steady state, greatly reduce some of the risks posed by lack of transparency within supply chains. It would also give contracting authorities greater ability to investigate supply chain behaviours.
197. This option would also place the Workforce (Two-tier) Code of Practice on a statutory footing for the first time, which would ensure that contracting authorities are required to comply with the duties under the Bill so as to achieve fair work, and reduce risks around industrial disputes and legal challenge.

⁵²John McClelland, [Maximising the Impact of Welsh Procurement Policy: Executive Summary \(2012\)](#)

198. Data driven outcomes derived from the annual reporting process and the new feedback service would provide evidence of public procurement's ability to deliver tangible, real world benefits to Welsh citizens and the economy, and provide a valuable baseline from which to assess the public procurement landscape within Wales.
199. For example, a reasonable expectation of improved socially responsible procurement would be an increase in spend with Welsh SMEs, reduced emissions through supply chain activity and increased delivery of social value outcomes through commercial activity.
200. The proposed Annual Report to be prepared by the Welsh Ministers could be used to establish critical success factors for the continuous improvement of public procurement in Wales. These would be used to determine policy intervention areas that could be proposed by the Welsh Government, and overseen by the Social Partnership Council. As well as providing shorter-term areas for development in individual contracting authorities, these could provide an evidential basis for the development of longer-term policy priorities to be taken forward by Welsh Government.
201. Similarly, spot checking undertaken by the new feedback service would help ensure that policy is being implemented effectively and also drive appropriate interventions.

Summary of costs (rounded to the nearest £100)

Summary of costs	
Transition	£
Table 2.2	82,000
Table 2.5	80,100
Sub-total	162,100
Annual	
Table 2.1	215,800
Table 2.3	119,600
Table 3.1	5,625,000
Table 3.2	111,300
Sub-total	6,071,700
Total	6,233,800

202. **The estimated implementation cost for this option is therefore £162,100, with an estimated annual cost of £6,071,700.**

SUMMARY OF PREFERRED OPTION

203. Option 3 delivers the most benefits, with mechanisms for measuring and reporting on outcomes, and for driving compliance. As Option 3 contains Option 2, it also benefits from the same efficiency savings compared with Option 1 overall, due to the potential for simplifying existing commitments and reducing overlap. The Welsh Government costs for Option 2 are largely covered by existing budget planning by Welsh Government's Commercial and Procurement Directorate, with additional cost of around £36,000 incurred from consequential impacts in extra work for public bodies. However, it should be noted that coordinating the reporting cycle and information with that required under the WFG Act has the potential to reduce this figure. Option 1 maintains the existing level of policy engagement, but misses a significant opportunity to place necessary changes on a statutory footing, to provide real cohesion between policy areas that are closely related and to focus more attention on outcomes.
204. Most of the additional administrative burden for contracting authorities and any associated costs would arise from following good practice, much of which is already set out in guidance, and undertaking due diligence associated with ethical business practice. This will particularly be the case once the statutory guidance is established. It is difficult to assess the extent to which this is not happening at present, and therefore to calculate potential additional costs.
205. The statutory guidance arising from the socially responsible procurement duty and all available policy support mechanisms would go as far as possible to minimise workload and duplication for business, and particularly SMEs.
206. Option 3 would promote compliance with the socially responsible procurement duty through scrutiny of, and eventual public exposure of any organisations repeatedly failing to comply with the general procurement strategy and reporting duties, and exception reporting about cases where organisations are not including socially-responsible contract clauses, or managing supply chains and contracts sufficiently.

Competition Assessment

207. At present, UK procurement law is primarily derived from the direct transposition of EU Directives. In the Welsh context, the procurement landscape is also underpinned by the Wales Procurement Policy Statement⁵³, which provides a framework of good practice and guidance aimed at (amongst other things):
- Maximising the economic, social and environmental value of procurement
 - Encouraging delivery of Community Benefits through procurement
 - Providing open, accessible competition
 - Producing simplified, standard processes
 - Encouraging supplier engagement and innovation.
208. The Wales Procurement Policy Statement is in the process of being refreshed to reflect current challenges and opportunities. The new version will be based around the priority policies noted elsewhere in this document; however, it is likely that the existing elements above will remain. As well as supporting these aims, the socially responsible procurement duty within the draft Bill is designed to exploit the leverage offered by the commercial activity in Wales to support national and local economic development, to simplify the private sector's experience of dealing with public procurement, and support small businesses.
209. The Bill does not alter the important principle of open, transparent and accessible competition that underpins the Welsh public procurement landscape. Care has been taken to ensure an approach that would not affect small businesses disproportionately. Adoption of the preferred option would strengthen good practice in public procurement, reducing bureaucracy and duplication in the procurement process and increasing transparency and simplicity which should make it easier for suppliers to compete. If anything, the measures within the Bill would help Welsh firms to become more competitive. This Bill would not change the regulations governing procurement processes themselves, which are currently set out in the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016.

Cross-border issues

210. Cross-border issues are not likely to be significant, because the same requirements would be placed on all bidders regardless of where they are

⁵³ [procurement-policy-statement.pdf](#)

based. For either larger businesses or those operating across borders different requirements may be placed on them by contracting authorities subject to the requirements of the draft Bill compared with those that are not, for example, but that is already the case. Other than in cases where significantly greater due diligence is being placed on supply chain transparency and the maintenance of standards of socially-responsible procurements, this should not have significant cost implications for businesses overall, and businesses would have a choice over whether to accept the requirements and compete for a contract. Although the introduction of new processes for ensuring flow-through of contract clauses, additional due diligence and more robust contract management arrangements would incur short-term administration and cost burdens to some extent, in the medium to long term these might help make Welsh firms more competitive in bidding for both Welsh and also UK public contracts, because they may also benefit the businesses' own internal management systems.

The definition of 'prescribed contracts' within the draft Bill

211. Careful consideration has been given to the definition of 'prescribed contracts' for public procurements subject to the terms of the proposed draft Bill in the Welsh context. It is important to ensure that any thresholds that may be set are proportionate, because contracting authorities would have less control over, and management information about, contracts below a certain value. Also, it is disproportionate to ask for in-depth social value assessments to be made on low-value contracts where the bureaucratic burden would outweigh potential benefits. Moreover, if thresholds are set too low, authorities may be required to ask SMEs to respond to tendering exercises that are disproportionately time consuming and expensive, and to deliver outcomes that are unrealistic. Welsh SMEs currently win around 52% of public contract spend and represent a huge part of the Welsh economy (accounting for 62.4% of employment and 99.4% of total enterprises in Wales in 2019⁵⁴), with micro SMEs (businesses with nine employees or fewer) accounting for 33.4% of employment alone.
212. If future post-implementation reviews indicate either that opportunities are being missed, or a disproportionate impact is being experienced by SMEs or specific sectors as a result of the thresholds set within the draft Bill and associated regulations, provision has been made for Welsh Ministers to amend these accordingly.
213. In 'Prescribed procurements' are defined within the Bill as major construction contracts with estimated value above £2m, outsourcing services contracts and "any other contract of description prescribed in

⁵⁴ <https://gov.wales/sites/default/files/statistics-and-research/2019-12/size-analysis-active-businesses-2019-503.pdf>

regulations”. In order to simplify requirements on contracting authorities subject to the terms of the Bill, the policy intention is that thresholds set in the Bill, and those to be established in subsequent regulations, are easy to apply and/or already familiar to the organisations concerned.

214. Thresholds under the current procurement regulations currently vary according to the types of contracting authorities and market sectors. They are updated every two years (next update due in January 2022). As of January 2020 the more relevant thresholds under the different regulations are as follows (these figures have been rounded to three figures):

Contracting Authority type	Threshold for Supplies or Services Contracts	Threshold for social and other services (light touch regime)	Threshold for Works Contracts, and for Concession contracts
Central Government Bodies)	£123k	£664k	£4.73m
Other public sector organisations (such as local government)	£189k	£664k	£4.73m
Utilities	£379k	£885k	£4.73m

215. It is the policy proposal that for goods and services, in all sectors we apply a level of £122,976 in the first instance.
216. The intention is to keep the levels that define ‘prescribed procurements’ in the draft Bill and regulations as simple as possible, and link them to existing procurement-related thresholds used. For construction contracts the £2m threshold has been included in the draft Bill, which is the same as that set out in Scottish legislation, due to the importance of addressing socially responsible procurement in this sector. Our decision on thresholds needs to reflect how public bodies organise their procurement activity, and ensure that the impact on both them and on companies is proportionate.
217. The following table looks at the total spend in Wales within contract value bands. It uses data provided by Sell2Wales to break down the value of contract adverts – low value (<£50k), and higher value (above £122,976

for services, and above £2m for works) from January 2019 to February 2020. These figures include contract awards placed by all bodies using Sell2Wales and not just those covered by this legislation. They represent expected maximum values, will also include framework agreements covering multiple years and could also include contracts delivered outside Wales advertised via Sell2Wales in order to generate competition. As such the figures here are expected to be higher than the annual Welsh spend.

218. This analysis is made in the table below to illustrate the contracts over £50,000 up to £122,976 (OJEU threshold) for services and supply, and £2m up to £4.7m (OJEU threshold) for works in order to compare the impact of legislation in Scotland, where the threshold for goods and services is £50,000, with that planned in this draft Bill.

Contract Award Notices, FY2019/20

Notice type	Total number of published contracts on Sell2Wales	Total value of these notices
OJEU Award Notices, Services and Supplies (above £122,976)	538	£5,511,907,891
Award Notices between £50,000 and £122,976, services and supplies	293	£23,361,020
OJEU Award Notices, Works (above £2m)	72	£8,183,905,638
Award Notices between £2m and £4,733,252, Works*	30	£98,014,914
Award Notices below £2m, Works	692	£125,682,976

*These contracts are already included in the figures for works contracts >£2m and so are excluded from the figures below in order to avoid double counting.

NB Not all lower value contracts are advertised via Sell2Wales, however a reasonable assumption is that most contracts over £50,000 are advertised via the site.

219. This table indicates an approximate 0.5%/99.5% split (by value) between lower value and above OJEU opportunities for services and supply contracts, and an approximate split of 1.5%/98.5% between lower value (<£2m) and higher value (>£2m) works contracts respectively.
220. If this pattern were replicated for contract awards both through and outside of Sell2Wales, application of our proposed thresholds would catch

over 98% of contracts value for both works, and services and supply contracts. This means that these thresholds could provide significant leverage without imposing disproportionate burdens on smaller contracts, smaller public bodies and small businesses. Even allowing for significant margin of error (10-20%), it is reasonable to surmise that this would be the case.

Bodies included in the procurement duties

221. To maintain consistency with existing and future legislation around procurement, we propose that all Welsh contracting authorities covered by the existing Public Contracts Regulations 2015 would be within scope of the socially responsible procurement duty within the draft Bill, other than some very small organisations. This does not, however, mean that all bodies would have to carry out all activities to the same level of detail. Those that do not carry out procurements above the thresholds will have lower expectations placed upon them.
222. It is also important to note that a different list of organisations is currently covered by Guidance and Direction on the Workforce Two-tier Code.
223. The organisations that are currently covered by the Two-tier Code and will still be covered by its current expectations are set out in the Circular: Code of Practice on Workforce Matters 2014 as:
 - county and county borough councils
 - community councils
 - National Park authorities
 - fire and rescue authorities
 - Local Health Boards
 - NHS trusts
 - the governing bodies of maintained schools
 - the Arts Council for Wales
 - the Care Council for Wales
 - the Higher Education Funding Council for Wales
 - the Local Democracy and Boundary Commission for Wales
 - the National Library for Wales
 - the National Museum for Wales
 - the Natural Resources Body for Wales
 - the Royal Commission on Ancient and Historic Monuments in Wales
 - the Sports Council for Wales.
224. This list was established in 2014 when the Two-tier Code was published, and has not been revisited systematically in the development of this draft Bill. Notwithstanding that, some organisations that were not included in the list above are included in the provisions on social public workforce clauses in this Bill. These are Transport for Wales, Digital Health Care Wales and the Welsh Revenue Authority. Others that were included in the list above are not included in the provisions on social public workforce

clauses in this draft Bill. These are: Community Councils, the governing bodies of maintained schools and the Local Democracy and Boundary Commission for Wales. It should be noted that until such time as the Two-tier Code is re-published these bodies will still be included within the existing requirements in relation to it.

225. 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. 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.

Benefits of this approach

- Achievability – option 3 could be feasibly supported by Welsh Government.
- Proportionality - procurement strategies and reporting are one-off or annual activities, and so once the first cycle is complete this is not a very time-consuming requirement. Reporting would also focus on higher-value tenders which would minimise the workload for smaller bodies in particular.
- Relevance – Statutory Guidance would help ensure that policies are applied where relevant.
- Consistency with existing procurement legislation and possible future legislation. Also, since these bodies are already subject to existing procurement legislation, there should already be some procurement capability and capacity in-house.
- More in line with Welsh public sector's experiences of engagement with Welsh Government to date, for example on Community Benefits reporting.
- Covers most “influenceable” spend, but not the lowest value contracts.

Disadvantages

- This does not cover all public procurement spend in Wales.
- This does not link thematically with other duties within the draft Bill and could result in overlap with reporting, which must be addressed in the guidance about reporting.

226. 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. 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.

227. 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 with significant procurement expenditure, 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. 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 regulations, which will remain in place pending any updates.

Annex 1

Body	Social partnership duty	Socially responsible procurement duty	Social public workforce clauses (“Two-tier Code”)
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
Body	Social partnership duty	Socially responsible procurement duty	Social public workforce clauses (“Two-tier Code”)
The Children’s Commissioner for Wales	No	Yes	No
The Commissioner for Older People in Wales	No	Yes	No

The Future Generations Commissioner 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
Body	Social partnership duty	Socially responsible procurement duty	Social public workforce clauses (“Two-tier Code”)
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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