



Explanatory Notes: Social Public Works Clauses



Introduction

1. [Section 27](#) of the Social Partnership and Public Procurement (Wales) Act 2023 (SPPP Act) requires that Welsh Ministers must publish model clauses for major construction contracts (“social public works clauses”) designed to bring about improvements to economic, social, environmental and cultural well-being. The improvements are listed in the Table in subsection (2) of the SPPP Act shown below:

Category	Improvements
Payments	Ensuring and enforcing prompt payments.
Employment	Providing employment opportunities to younger people, older people, the long term unemployed, people with disabilities ¹ or people who may otherwise be disadvantaged (for example because of their race, religion or belief, sex, gender identity or sexual orientation).
Compliance	Ensuring compliance with legal obligations in relation to employment rights (including the minimum and living wage), health and safety, and trade union representation.
Training	Providing appropriate training for workers.
Sub-contracting	Providing opportunities to small and medium sized enterprises and voluntary organisations to execute works, supply products or provide services.
Environment	Requiring sustainable management of natural resources, use of sustainable materials, resilience to the impact of climate change, reduction of greenhouse gas emissions, and enhancement of the natural environment and biodiversity.

The model clauses have been produced for use with:

- the NEC3 & 4 Engineering and Construction Contract (“ECC”)²;

¹ Draft [The Social Partnership and Public Procurement \(Wales\) Regulations 2026](#) substitutes this term with “disabled people”.

² The model NEC clauses can be easily adapted for use with the NEC3 & 4 Term Service Contract (“TSC”) and Professional Services Contract (“PSC”).



- JCT Design and Build Contract 2016 / 2024³;
- Bespoke contracts; and
- Forms of Project Bank Account⁴ documents.

Call-Off contracts under Frameworks

2. Under the SPPP Act, framework agreements are classified as a contract. Therefore, the works clauses are applicable to all Frameworks valued over £2m and call-off contracts that are valued over £2m. The Works clauses do not need to apply to framework call-off contracts below £2m.

³ The model JCT clauses can be used with minor amendments in the Minor Works Contracts and the various forms of Subcontract Conditions.

⁴ If it is necessary to make provision for a PBA under an Engineering and Construction Short Contract or a Professional Service Short Contract, further amendments will be required to incorporate some of the standard conditions of contract from the ECC, TSC and PSC, respectively, as the short forms of contract do not anticipate the same level of governance as the full forms in respect of subcontracting.



Payments - Prompt Payment and Sub-Contracting



3. The model clauses relating to the category of Payments aim to bring about improvements by “ensuring and enforcing prompt payments”. They aim to do this by:
 - ring-fencing funds allocated to projects to ensure protection of payments to the supply chain;
 - transparency of supply chain payments - both in respect of payment for work completed and for retention monies owed; and
 - promptness in assessing and making all payments (whether interim, final, release of retention or otherwise), to assist in supply chain productivity.

30-day payment term

4. The model clauses require the Contractor to ensure that all sub-contracts and sub-sub-contracts throughout the whole supply chain, contain a clause requiring payment of all sums which are properly due under the relevant contract, within 30 days from the assessment date / application for payment.
5. The model clauses still enable the Employer/Client to “pay less” / hold a retention where it is contractually entitled to do so, but otherwise, payment must be made in full within 30 days.
6. The model clauses entitle Contracting Authorities to check that the 30-day payment term is included in all sub-contracts. They also entitle the Contracting Authority to withhold approval of a sub-contract if it does not provide for the requisite payment period.

Project Bank Accounts (PBAs)

7. The model clauses require the use of PBAs.
8. Provided that the necessary amendments and additions have been made to the standard form of contracts in line with the model clauses, the model forms of PBA documents can be used with all forms of NEC and JCT contracts ⁵without amendment (other than as already required by the model forms).

⁵ If it is necessary to make provision for a PBA under an Engineering and Construction Short Contract or a Professional Service Short Contract, further amendments will be required to incorporate some of the standard conditions of contract from the ECC, TSC and PSC, respectively, as the short forms of contract do not anticipate the same level of governance as the full forms in respect of subcontracting.



9. The model clauses require all sub-contractors of the Contractor and all sub-sub-contractors to be paid via the PBA, except for those sub-contracts which are specifically excluded by agreement with the Contracting Authority.
10. The Contractor will need to provide the Contracting Authority with an opt out form completed by the sub-contractor should the sub-contractor not wish to be part of the PBA. The entity wishing to engage a sub-contractor or sub-sub-contractor will not be permitted to do so if the Contracting Authority does not agree that the sub-contractor or sub-sub-contractor can be excluded from the PBA.

Digital Alternatives

11. There are a number of new digital alternatives to traditional PBAs that are beginning to emerge. These new digital solutions are developing rapidly and are likely to play an important role in the longer-term delivery of prompt payment.
12. If a Contracting Authority wishes to use a digital solution in place of a traditional PBA, they will need to notify Ministers that they are not including the clauses. It is important that Contracting Authorities undertake full research to satisfy themselves that the alternative meets the requirements for secure, ring-fenced, prompt and transparent payments in supply chains. This assurance will be needed to support the notification to Ministers.

Monitoring PBA Payments

13. The model clauses and PBA require the Contracting Authority to be party to the PBA. As such, the Contracting Authority has full visibility to monitor the PBA.
14. The model PBA documents provide that the Contractor is obliged to pay the full sums due to the subcontractors and must pay into the PBA any sums withheld by the Contracting Authority by virtue of a pay less notice, which the Contractor is obliged to pay to sub-contractors (unless the Contractor is also able to issue a pay less notice).
15. As the PBA will be a Contracting Authority's sole account, or a joint account between the Contracting Authority and the Contractor, the contract should also provide for when the use of the PBA should come to an end.



Retentions and Retention Bonds

16. A “Retention” is any sum of money, whether paid as a cash lump sum upfront or withheld from payments made under a ‘construction contract’ (as defined by the Housing Grants, Construction and Regeneration Act 1996 (as amended)) by way of performance security.
17. The model clauses set out how Retention moneys should be held and released. The clauses also make provisions for the use of a Retention Bond, which can be provided as an alternative to a cash retention.
18. The form of Retention Bond provides for the Contracting Authority to be able to claim a sum, up to the amount that it would be entitled to retain from payments due to the Contractor under the contract at the point of the claim.
19. The value of the retention bond reduces to 50% of the Bond amount on production to the bond provider of a practical completion certificate (or equivalent) and expires on expiry of the defect rectification period (or equivalent).
20. If the Contractor provides a Retention Bond, it can only insist on a retention bond from its subcontractors if that is reasonable (considering the value and estimated length of the sub-contract). If it is not reasonable to insist on a bond, the Contractor must not hold a cash retention from subcontractors as an alternative.
21. In respect of the timings at which part of the retention may need to be released by the Contracting Authority, the model clauses provide for four release triggers:
 1. Practical Completion: this relates to practical completion of the whole of the works under the main building contract;
 2. Rectification: this is the expiry of the period under the main building contract during which the contractor is obliged to return to the site and remedy any defects identified and notified to it, for which it is responsible under the building contract;
 3. Interim: this relates to practical completion of the works required under a subcontract;
 4. Possession: this occurs if the Contracting Authority takes possession of the site of the works (or any part of the site) prior to practical completion of the whole of the works.



22. Triggers 1, 2 and 4 are already triggers for release of retention sums under the JCT and NEC standard forms of contract. Trigger 3 is a new provision.



Employment



23. The model clauses relating to the category of Employment, aim to bring about improvements by “Providing employment opportunities to younger people, older people, the long term unemployed, people with disabilities⁶ or people who may otherwise be disadvantaged (for example because of their race, religion or belief, sex, gender identity or sexual orientation).”⁷

24. They aim to do this by:

- Including a contractual obligation on the Contractor (and any sub-contractor) to adopt inclusive recruitment and employment policies;
- Requiring Contractors (and sub-contractors) to demonstrate compliance by having an employment plan that outlines how the Contractor (and any sub-contractor) will:
 - provide opportunities to the groups identified;
 - identify and address skills gaps within the workforce; and
 - sharing opportunities for continuing employment
- Requiring the Contractor to provide a copy of the employment plan to the Contracting Authority within a period of time determined by the contract; and
- Requiring a Contractor to provide such data to the Contracting Authority as is required to demonstrate compliance with this contractual obligation.

25. The model clauses also include certain additional clauses (indicated by italics and square brackets) which provide for the Contractor (and any sub-contractor) to sign up to:

- the Ethical Employment Code ([Code of Practice - Ethical Employment in Supply Chains issued by the Welsh Government on 31 May 2017](#)) and any similar applicable schemes or codes of practice promoted by the Welsh Government,
- Disability Confident Scheme,
- Diversity Champions; and
- Race - Business in the Community.

26. There is also an optional clause to adopt fair employment and labour practices, recruiting and retaining staff in a fair and ethical manner, providing a safe and competent workforce employed in accordance with Welsh Government’s Guide to Fair Work.

27. These additional clauses are included to assist Contracting Authorities in bringing about improvements to the employment opportunities provided by Contractors (and sub-contractors) they are not mandated clauses and Contracting Authorities

⁶ Draft [The Social Partnership and Public Procurement \(Wales\) Regulations 2026](#) substitutes this term with “disabled people”.

⁷ These represent some of the protected characteristics under the Equality Act 2010.



can determine their appropriateness in the context of the contract being awarded. If a Contracting Authority does not intend to include the additional clauses in their major construction contract, a notification to the Welsh Ministers is not required.



Compliance



28. The model clauses relating to the category of Compliance, aim to bring about improvements by “Ensuring compliance with legal obligations in relation to employment rights (including the minimum and living wage), health and safety, and trade union representation.”

29. They aim to do this by:

- Placing an obligation on the Contractor (and any subcontractors) to ensure that they are informed of, and comply with, their legal obligations in relation to employment law and rights (this would encompass the national minimum/living wage obligations), equality, health and safety and trade union recognition;
- Enabling the Contracting Authority to request accurate and complete information from the Contractor in relation to:
 - Employment status
 - The minimum hourly rate of pay for each category of worker;
 - Number of workers engaged on zero or non-guaranteed hours contracts and their terms;
 - Health and Safety policies, risk assessments and certification;
 - Trade union recognition agreements;
 - Compliance processes for employment law and employment rights;
- Outlining for the type of information that may be requested from the Contractor, e.g. contracts of employment, payslips, policies and procedures and any other relevant documentation allowing the Contracting Authority flexibility in terms of the information requested;
- Placing an obligation on the Contractor to put in place, or communicate the existence of, a confidential mechanism for reporting unethical employment practices.

30. The model clauses also include additional clauses (indicated by italics and square brackets). The additional clauses enable the Contracting Authority to require the Contractor (and any sub-contractor) to put in place a plan that details how it will implement and maintain policies and procedures to ensure compliance with Modern Slavery, Human Rights and offshore labour standards and undertake a risk assessment in relation to each of these aspects. There are reporting obligations on the Contractor in relation to these aspects and Contracting Authorities can request information on the Contractor’s compliance with these aspects.



31. These additional clauses are included to assist Contracting Authorities in bringing about improvements to these additional aspects of legal compliance, however if a Contracting Authority does not intend to include the additional clauses in their major construction contract, a notification to the Welsh Ministers is not required.



Training



32. The model clauses relating to the category of Training, aim to bring about improvements by “Providing appropriate training for workers.”

33. They aim to do this by:

- Requiring Contractors (and subcontractors) to put in place a Training Plan and to ensure that workers are provided with comprehensive training in accordance with good industry practice, training opportunities which workers are enabled to undertake, and opportunities to upskill;
- Enabling Contracting Authorities to require Contractors (and subcontractors) to provide a copy of the Training Plan together with information about types of apprentices being used (and the numbers of years served) in delivery of the contract, professional qualifications obtained, and health and safety and project induction training.

34. These model clauses complement the requirement under the model employment clauses to identify and address skills gaps within the workforce. It also supports the compliance clauses in enabling Contracting Authorities to get additional information about apprenticeships and training undertaken.



Sub-Contracting



35. The model clauses relating to the category of Sub-contracting aim to bring about improvements by “Providing opportunities to small and medium sized enterprises and voluntary organisations to execute works, supply products or provide services.”

36. They aim to do this by requiring the Contractor to:

- Provide a plan, recording the actions it will take to promote and facilitate sub-contracting opportunities for small and medium-sized enterprises, micro enterprises and voluntary organisations;
- Identify, within the plan, those sub-contracting arrangements that the Contractor has already made at the commencement of a contract. and those additional sub-contracting arrangements that the Contractor anticipates may be required during the course of the contract;
- Provide details of how it will advertise opportunities and maintain a record of sub-contracts in both cases;
- Advertise sub-contracting opportunities on Sell2Wales if they are advertised anywhere;
- Maintain a record of sub-contracts.
- Report to the Contracting Authority on the Contractor’s progress in delivering the plan.



Environment



37. The model clauses in the environment category aim to encourage contractors and their supply chains to work together to protect and enhance the local environment, use materials sustainably, take action to reduce carbon and to increase resilience. They also encourage contractors to consider the global impacts of their procurement decisions.
38. These improvements are being brought about by “requiring sustainable management of natural resources, use of sustainable materials, resilience to the impact of climate change, reduction of greenhouse gas emissions, and enhancement of the natural environment and biodiversity.”
39. They aim to do this by requiring the Contractor to:
- Provide a plan recording the actions that the Contractor shall take during the course of the contract and the completed works to address resilience to climate change, enhance the natural environment and biodiversity, minimise whole life carbon emissions, and reduce the global ecological footprint, and to report on progress in delivering this plan;
 - Agree targets for increasing the use of re-used, recycled and sustainably sourced material required for delivering the contract, reducing the amount of waste and the delivery of waste to landfill in delivering the contract, and reducing whole life carbon emissions in the delivery of the contract.



Transparency



40. In respect of major construction contracts, social public works clauses, the Act requires a Contracting Authority to notify the Welsh Ministers if:

- there is no intention to include the clauses;
- the clauses are not included;
- there is no process for ensuring implementation of the clauses;
- there is no process for ensuring implementation of the clauses in sub-contracts.

41. The Act provides that the Welsh Ministers may require the Contracting Authority to provide documents or other information as the Welsh Ministers may require in order to decide whether they are satisfied with the reasons given for not including the clauses.

42. The aim of these provisions is to provide transparency, including about how and when social public workforce clauses are being used.

43. This transparency can only be achieved if the contracting authority has access to the information that it requires in order to pass that information to the Welsh Ministers. Accordingly, each Contracting Authority will need to include provisions in its contracts which enable it to request and inspect such information.

44. For that purpose, model Transparency clauses, permitting Contracting Authorities to request information and carry out audits in relation thereto are included.