

Cyflwynwyd yr ymateb i ymgynghoriad y [Pwyllgor Cydraddoldeb a Chyfiawnder Cymdeithasol](#) ar [Y Bil Partneriaeth Gymdeithasol a Chaffael Cyhoeddus \(Cymru\)](#)

This response was submitted to the [Equality and Social Justice Committee](#) consultation on [Social Partnership and Public Procurement \(Wales\) Bill](#)

SPPP 31

Ymateb gan: Cymdeithas Llywodraeth Leol Cymru | Response from: Welsh Local Government Association



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Social Partnership and Public Procurement (Wales) Bill

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Welsh Local Government Association - The Voice of Welsh Councils

The Welsh Local Government Association (WLGA) is a politically led cross party organisation that seeks to give local government a strong voice at a national level.

We represent the interests of local government and promote local democracy in Wales.

The 22 councils in Wales are our members and the 3 fire and rescue authorities and 3 national park authorities are associate members.

We believe that the ideas that change people's lives, happen locally.

Communities are at their best when they feel connected to their council through local democracy. By championing, facilitating, and achieving these connections, we can build a vibrant local democracy that allows communities to thrive.

Our ultimate goal is to promote, protect, support and develop democratic local government and the interests of councils in Wales.

We'll achieve our vision by

- Promoting the role and prominence of councillors and council leaders
- Ensuring maximum local discretion in legislation or statutory guidance
- Championing and securing long-term and sustainable funding for councils
- Promoting sector-led improvement
- Encouraging a vibrant local democracy, promoting greater diversity
- Supporting councils to effectively manage their workforce

Introduction

In our response to the Welsh Government's Consultation on the Social Partnership and Public Procurement (Wales) Bill we offered our full support for the legislation and highlighted the long-standing commitment of local government to the principles of social partnership and fair work. The Bill promotes what is regarded as best practice and reflects much of what is being done already within our local authorities.



Response to the Committee's Questions:

1. The general principles of the Social Partnership and Public Procurement (Wales) Bill and the need for legislation to deliver the stated policy intention.

Social Partnership and Fair Work

The WLGA is broadly supportive of the general principles of the Bill and supports the legislation as a mechanism to achieve the policy intent in relation to social partnership and fair work.

Social partnership is a familiar feature within local government, with well-established arrangements between local government employers and trade unions, particularly at the local level and through national partnership structures such as the Joint Council for Wales. However, social partnership means different things to different people and often suffers from a lack of common understanding or interpretation, which creates inconsistencies. It is hoped that the principles enshrined within the Bill, its provisions and accompanying guidance will provide greater clarity on what social partnership and fair work means in a Welsh context, to promote a shared understanding and provide some measure of consistency to inform and promote rather than prescribe best practice.

Socially Responsible Procurement

We are also supportive of the socially responsible procurement provisions well. The stated objectives of this Bill are all things we can do now within the current legislative regime for procurement.

We also have innovative Welsh legislation such as the Well Being of Future Generations Act and the Social Services and Wellbeing Act. These Acts and others also support the achievement of the stated objectives. The purpose of this legislation is given as being to drive a greater level of consistency; and Councils already have common purpose through the enhanced duty of community wellbeing, so any lack of consistency is not for the want of legislation or motivation. There must be reasons why we are not achieving the political ambition that the new Bill is intended to achieve.



1a The establishment of a Social Partnership Council

The WLGA is supportive of the creation of the Social Partnership Council (SPC), particularly given the success of the Shadow Social Partnership Council during the pandemic. Local government has always been supportive of social partnership arrangements whether locally or at the national level and are active partners in the Shadow Social Partnership Council, Workforce Partnership Council and in sector specific bodies such as the Schools Social Partnership Forum and Social Care Fair work Forum.

What is considered important, as a new body such as the SPC is established, is to take the opportunity to review the many different partnership structures that exist and streamline the social partnership infrastructure. There has been a significant expansion of social partnership bodies and sub-structures, and as each is created this increases the burden on partners to resource the membership and support the work of each. Whilst local government will continue to be an active participant and is fully committed to social partnership and fair work in Wales, there needs to be recognition that too many bodies will spread the resource available too thinly to be most effective. Consequently, further consideration is needed across the range of different partnership bodies that exist, to streamline these and take decisions on whether the establishment of the SPC will replace or render other structures redundant. This includes a decision on the future of the Workforce Partnership Council, of which local government has been part for more than a decade.

There is a need to be clear about the role of the SPC and how this will work with, relate to and respect other structures, particularly well-established local arrangements and bodies such as the Joint Council for Wales.

The membership and nomination process, including how members will be appointed to the SPC suggests that advice will be sought from suitable persons or bodies, however whilst the role of Wales TUC is made explicit for trade union membership, the Bill fails to clarify or make provisions that acknowledge or protect the role of employer organisations and in particular bodies such as the WLGA which are certified under the TULRCA. It is suggested that further clarification is needed to ensure that, for local government in Wales, the WLGA is acknowledged within the legislation as the appropriate representative body and the nomination mechanism for the SPC or alternatively for the Bill to identify that membership will be sourced from certified employers' organisations or associations where these exist. This will be important so that the formal representative role of organisations such as the WLGA is respected and protected over time as the membership is refreshed.



1b A statutory duty on certain public bodies to seek consensus or compromise with their recognised trade unions (or where there is no recognised trade union) other representatives of their staff, when setting their well-being objectives and delivering on those objectives under section 3(2) of the WFG Act 2015

Local authorities have well established social partnership arrangements, developed in partnership with workers through their recognised trade unions and in response to local needs. Each local authority, as an independent autonomous organisation, is different in size, structure, culture and context and local partnership arrangements will reflect this, however they will all be underpinned by the same basic principles that support formal partnership arrangements for the purposes of workforce consultation and engagement, but it is not one size fits all.

The Social Partnership Duty appears to recognise and build on this good practice rather than introduce another layer of bureaucracy and this is welcomed. Support for the Duty is predicated on this commitment, to further support and strengthen local social partnership arrangements, by extending the participation and engagement of the workforce in discussions on fair work and the Wellbeing of Future Generations Act. However, flexibility is key, any framework should promote consistency but offer flexibility in practice. Local discretion and decision-making needs to be respected and unfettered.

The Duty provides an opportunity to establish consistency in terms of understanding, rather than prescribing a particular model or universal approach, as one size does not fit all. It needs to articulate and explain what social partnership is within a Welsh context, the key principles that underpin practice and the anticipated outcomes, so that the public policy agenda and ambition is clear. A shared understanding of social partnership that informs rather than prescribes practice, will encourage consistency of application whilst enabling local differences, to ensure arrangements remain appropriate, relevant and fit for purpose.

1c A statutory duty on Welsh Ministers to consult social partners, employers and worker representatives through the Social Partnership Council when delivering on their well-being objectives under section 3(2)(b) of the WFG Act 2015

The WLGA supports the proposed duty on Welsh Ministers to consult social partners through the Social Partnership Council.



1d Amendment of section 4 of the WFG Act 2015 by substituting ‘fair work’ for ‘decent work’ within the existing “A prosperous Wales” goal

The WLGA supports the amendment from decent work to fair work as this better reflects the current policy context and debate following publication of the Fair Work Commission report and recommendations.

1e A statutory duty on certain public bodies to consider socially responsible public procurement when carrying out procurement, to set objectives in relation to well-being goals, and to publish a procurement strategy

Welsh Councils already consider socially responsible public procurement when carrying out procurement, set objectives in relation to well-being goals, and publish a procurement strategy. Where not, this is likely to be because they allude directly to National strategies and guidance for Wales. We also publish contract pipelines, to allow better strategic oversight of procurement and notify potential contractors of future opportunities. This is done as good practice, so it is not unreasonable to expect some local variation. Legislative support will empower the work and drive national consistency. New UK Procurement & Contracting Rules are currently being enacted and are targeted to be enacted in late 2023.

These UK rules include changes that support socially responsible public procurement. It is likely that there will be mandatory requirements on transparency, mandatory publication of procurement strategy and mandatory publication of procurement pipelines.

Procurement is a devolved matter; but Welsh Ministers have agreed to work with UK Government on rules reform. We understand a Legislative Consent Memorandum went to the Senedd in June and that Ministers are working towards assent for the adoption of these rules, or a close equivalent adapted to Wales.

There are welcome reforms. A shift from requiring the Most Economically Advantageous Tender to the less specific requirement of Most Advantageous Tender will empower application of the Social Value Act in England; by allowing public bodies there to make better procurement decisions; through a better understanding of value and the application of non-financial value factors in application to support the delivery of services to the public.

In Wales we have the Wellbeing of Future Generations Act. This is more ambitious than its English equivalent but is also harder to deliver; requiring wider consideration of social value and a different way of thinking about what value is and how it is achieved. We anticipate that the adoption of UK legislation in Wales will likewise empower the delivery of the Wellbeing of Future Generations Act. It will do this



partly through equivalent provision for social value here and also by allowing us to go further in support of the well-being goals in Wales.

This can include the provision of a statutory duty on certain public bodies to consider socially responsible public procurement when carrying out procurement, to set objectives in relation to well-being goals, and to publish a procurement strategy.

1f Certain public bodies to carry out contract management duties to ensure that socially responsible outcomes are pursued through supply chains.

Social Partnership is a feature of Welsh life and Councils in Wales have historically resisted trends in the other parts of the UK, such as outsourcing services at scale.

SPD which supports fair employment in outsourced services will have no impact if services are not outsourced.

Insourcing of services does not often occur where services have not been previously outsourced. One exception would be in the event of market failure where the Council steps in as the default provider. The powers to do this already exist, for example the power to support community wellbeing.

None of this affects the existence of human rights, the application of employment law and the regulatory duties of Councils within communities.

There is likely to be a relationship between the strength of regulatory services and the prevalence of workforce abuses; but this is not a procurement matter as all procurement by Councils will require legal compliance as a minimum.

The direction of travel for procurement has been away from a binary cost/quality model which inevitably led to lowest cost award matched to cheapest form of provision. Modern procurement is about providing value across the piece, measured in real terms. This means valuing what is important and what is important in one place might be different to that in another. Why the determination of value needs to be determined in full knowledge of the needs of immediate stakeholders and with consideration of all local impacts that a value-based decision will make. Councils are ideally placed to do this.

One important difference between the 2015 public procurement & contracting regulations and the regulations expected in late 2023 is the change from requiring the Most Economically Advantageous Tender (MEAT) to the most Advantageous Tender (MAT). Advantage will no longer need to be confined to economic measures.



1g Reporting duties to be imposed on the public bodies and Welsh Ministers in relation to the Social Partnership Duty and Procurement duty.

There is some concern about the burden of reporting for local authorities and the resource implications in meeting these demands across the provisions in the Bill.

Another concern is the potential for exception reporting in relation to the procurement duty to create unnecessary delays in decision-making, there is a challenge over whether the proposed provisions are proportionate and work with rather than disrupt current processes.

2. Any potential barriers to the implementation of the Bill's provisions and whether the Bill takes account of them

The key challenge is capacity and support for operational delivery, particularly for procurement. There is willingness and capability, but capacity is the issue as those corporate support functions on which the Bill relies bore some of the brunt of austerity cuts.

The WLGA would welcome working more closely with Welsh Government officials on the development of guidance to support implementation of the Bill and in supporting and promoting further dialogue around Fair Work with our local authority networks to explore the implications for local government in the future.

3. The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)

We would support this.

4. Whether there are any unintended consequences arising from the Bill

The practice of empowering good practice through legislative reform inevitably creates new risks and unintended consequences.

Immediate concerns for procurement include the likely administrative burden and the likelihood of non-compliance in what is already a complex and highly legislated area of practice. Councils are particularly concerned about the practicalities.

Procurement requires increasingly specialised expertise; but is largely conducted by regular staff in front line service roles; not by procurement specialists as there are simply too few of those to go round. It might be that the provisions of this Bill increase the likelihood of inadvertent or technical non-compliance.



Conditions for procurement are rarely ideal and operational decisions need to be made. These are decisions by responsible people, made for the right reasons; but it may be that the provisions of this Bill increase the likelihood of practical non-compliance.

Additional grounds for challenge are likely to be tested and/or exploited in additional legal challenge, including vexatious challenge. Challenges create delays, consume resource and cost money. Delays to decision-making and our ability to award contracts will not be helpful.

We must be careful not to inadvertently fetter good practice. Change is constant and the responses we want are the ones that happen closest to the recipients of services, that meet their needs and expectations, in which they take a stake. We cannot afford for the desire to deploy command and control of procurement practice through legislation to prevent our capability for local innovation and responsiveness.

5. The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum)

Whilst you cannot include everything in a Regulatory Impact Assessment the current assessment of costs is heavily weighted to those anticipated by Welsh Government, there are few costs assessed or factored into the RIA in terms of other organisations, those bodies subject to the main provisions in the Bill. This is something that needs to be addressed.