

Social Partnership and Public Procurement (Wales) Bill

Stage 2 amendments

March 2023



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1. Introduction to the Bill

The Deputy Minister for Social Partnership, Hannah Blythyn MS, introduced the **Social Partnership and Public Procurement (Wales) Bill** (the Bill) on 7 June 2022. The Bill is currently at **Stage 3 of the Senedd’s legislative process**.

The **Explanatory Memorandum** to the Bill states that it makes provision for:

- the establishment of a Social Partnership Council;
- a statutory social partnership duty to be placed on certain public bodies when setting their well-being objectives and delivering on those objectives under section 3(2) of the Well-being of Future Generations Act 2015 (the WFG Act 2015). The duty requires them to seek consensus or compromise with their recognised trade unions or (where there is no recognised trade union) other representatives of their staff;
- 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;
- amendment of section 4 of the WFG Act 2015 by substituting ‘fair work’ for ‘decent work’ within the existing “A prosperous Wales” goal;
- 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;
- certain public bodies to carry out contract management duties to ensure that socially responsible outcomes are pursued through supply chains; and
- reporting duties to be imposed on the public bodies and Welsh Ministers in relation to the social partnership duty and procurement duty.

This briefing focusses on the changes made to the Bill at Stage 2 of the Senedd’s legislative process. Further detail on what the Bill does, and the key issues raised in Stage 1 scrutiny, is available in our **Bill Summary**.

2. Summary of Stage 2 amendments

Stage 2 consideration of the Social Partnership and Public Procurement (Wales) Bill began on 30 November 2022, and concluded on 23 January 2023. The Equality and Social Justice Committee met to consider the Stage 2 amendments **on 23 January 2023**.

115 amendments were put forward at Stage 2. Of these, 11 were brought forward by the Member in Charge of the Bill (Hannah Blythyn MS). The majority (60) of the other amendments were tabled by Joel James MS, while Peredur Owen Griffiths MS and Jane Dodds MS tabled 22 amendments each.

Amendments were grouped together to facilitate debate. There were 17 groups. Details of the key points from each group are set out below.

Social Partnership Council: Chairing, meetings and procedure

This group covered 20 amendments, of which the only amendment agreed was the Deputy Minister's amendment 1. That places a requirement on Welsh Ministers to **consult with members of the Social Partnership Council (the SPC) before making any revisions to the SPC's procedures**. This responded to recommendation 4 in the Equality and Social Justice Committee's **Stage 1 report**.

The other 19 amendments in this group were tabled by Joel James MS. He proposed that an independent Chair be appointed by the Senedd instead of the First Minister chairing the SPC (and Welsh Ministers or Deputy Ministers if the First Minister is unable to). Other amendments in this group covered the arrangements for SPC meetings and its members' expenses.

The Deputy Minister did not support these amendments, and none were agreed. She **said**, in respect of the Chair of the SPC:

Members will know that the function of the social partnership council, as set out in the Bill, is to provide information and advice to the Welsh Ministers on relevant matters. It's entirely appropriate that the First Minister, or another Welsh Minister or Deputy Minister, should chair the council.

The Deputy Minister also stated that requiring the SPC to meet four times per year, and requiring meeting agendas to be published within a specified period of each meeting would be too prescriptive.

Social Partnership Council: Political representatives

All 9 amendments in this section were tabled by Joel James MS, who proposed that each of the political parties represented in the Senedd be represented on the SPC, and that the First Minister must only appoint an individual nominated by their political party. Joel James MS **said** the amendments would serve to:

...increase the political representation on the social partnership council, therefore enabling a wider range of voices to be heard. It also helps

improve scrutiny of the Welsh Government, because other political parties would have access to the advice that the Welsh Government is receiving.

The Deputy Minister did not support these amendments, and none were accepted. The Deputy Minister **set out** her reasons for not accepting these amendments:

Our vision for the SPC is as a formal channel through which employers and trade unions—specifically employer and worker representatives—are able to engage with Welsh Ministers, to work with us to reach consensus on issues of mutual interest and to provide us with advice to better inform policy development and support implementation.

Social Partnership Council: employer representatives

All 7 amendments in this section were tabled by Joel James MS, and related to employer representation on the SPC.

These amendments sought to increase the number of employer representatives on the SPC from 9 to 12 to include representatives from small, medium and large businesses, and to highlight the importance of local health boards and local government when considering public sector employer representatives.

The Deputy Minister **responded to** these amendments, stating that the SPC “is intended to be tripartite, with equal representation from social partners”. She said the amendments would lead to there being more employer representatives than those representing workers. She also said that she was “unconvinced” of the need to prioritise local health boards and local government when considering public sector employer representatives.

All of the amendments in this group were rejected.

Social Partnership Council: nominations by Wales TUC Cymru

This group included 3 amendments, of which 2 were tabled by Jane Dodds MS and the other by Peredur Owen Griffiths MS.

Should the Bill be passed, the Wales TUC will nominate worker representatives to the SPC. Peredur Owen Griffiths MS’s amendment sought to place a duty on the Wales TUC to consider non-affiliated unions when making these nominations. Jane Dodds MS submitted an amendment to require the Wales TUC to nominate at least half of worker representatives from non-affiliated unions. She also submitted an amendment to require the Welsh Government to have regard to these

nominations rather than only being able to appoint individuals nominated by the Wales TUC.

The Deputy Minister did not support these amendments, and they were either withdrawn or not agreed. She noted:

I do very much understand and appreciate the concerns that some Members have in regard to this issue and the spirit in which these amendments have been tabled. However, a duty of the type proposed will not be possible, primarily because Wales TUC is a private body. Instead, I have agreed with Wales TUC Cymru that the nominations will include representation from non-affiliated unions.

The Deputy Minister also provided the Equality and Social Justice Committee with a letter from Shavanah Taj, General Secretary of the Wales TUC, **which stated:**

We welcome the opportunity to clarify that it is the Wales TUC's intention to seek nominees from all trade unions in Wales, not just those affiliated to the TUC...

While we cannot pre-determine who the union side nominations will be and which trade unions they are associated with (as this will be determined by trade unions themselves, as the worker representatives), we would expect non-affiliated trade unions to be included as part of the list of nominees presented to the First Minister.

Social Partnership Council: duration of appointments

This group included 3 amendments, 2 of which were submitted by Joel James MS with Peredur Owen Griffiths MS introducing the other.

Joel James MS's amendments proposed a minimum attendance requirement for SPC members, and that the First Minister be limited to terminating appointments only when individuals' behaviour means that they are unfit to continue on the SPC. Peredur Owen Griffiths MS's amendment sought to insert a two-term limit for members of the SPC.

These amendments were not passed, and the Deputy Minister did not support them. She **stated:**

It's normal practice in public appointments that not all members will stand down at the end of their three-year term. This ensures flexibility and continuity. The Bill does not prevent reappointment of an individual to the SPC or representative serving consecutive terms... I think it's unnecessary to spell out specific reasons on the face of the Bill why an appointment should be terminated. There needs to remain an element of discretion around appointments in order to deal with a range of different circumstances, including ensuring a mix of people with the

requisite skills, background and experiences and to maintain corporate knowledge.

Sub-groups of the Social Partnership Council

This group included 5 amendments, of which 4 were submitted by Joel James MS and 1 by Peredur Owen Griffiths MS.

Joel James MS's amendments sought to:

- Include requirements covering the skillsets of people on sub-groups;
- Ensure equal representation of employer and worker representatives on sub-groups;
- Require that amendments to the membership and functioning of sub-groups are presented to the SPC before a final decision is made; and
- Establish a sub-group of the SPC to consider barriers to employment facing students, graduates and unemployed people.

Peredur Owen Griffiths MS's amendment aimed to require the procurement sub-group of the SPC to have at least one member from a voluntary sector employer.

The Deputy Minister did not support these amendments, and all were rejected or withdrawn. She commented that, in her view, these would be decisions for the SPC to make, and should not be prescribed in legislation. The Deputy Minister also said the establishment and membership of sub-groups would be better dealt with through guidance.

Social partnership duty

There were 5 amendments in this group, of which 3 were submitted by Joel James MS and 2 by Jane Dodds MS. Both were duplicate amendments that couldn't be moved or voted on.

Section 16 of the Bill introduces a social partnership duty. Under this, public bodies within the scope of the Bill are required to seek "consensus or compromise" with recognised trade unions (or other staff representatives where there is no recognised trade union) on well-being objectives and decisions of a strategic nature on meeting these objectives. The amendments submitted by Joel James MS aimed to change this to a requirement to consult with trade unions or other staff representatives. It also looked to set a time limit for consensus to be achieved before a public body can proceed without it.

The Deputy Minister set out why she did not support the amendments, and why she considers that these parts of the Bill as drafted should remain:

In contrast to consultation, we have deliberately chosen to use the wording of 'seeking consensus or compromise' to encourage a more meaningful culture of engagement and working with work representatives, involving them in the process of setting well-being objectives. These are steps intended to involve trade unions or staff representatives in the decision-making processes, and their requirements are intended to promote a more consistent and collaborative approach to strategic decision making and connection with the public bodies' well-being duty, one which properly takes account of the views, knowledge and experiences of the workforce.

The amendments in this group were not passed.

Social partnership reporting arrangements

There were 4 amendments in this group, all of which were tabled by Joel James MS.

There is a requirement in the Bill that requires public bodies under the scope of the social partnership duty to report annually on what they have done to comply with the duty. The amendments introduced by Joel James MS would remove this annual reporting requirement. Instead public bodies would only produce reports when directed to by the Social Partnership Council.

None of the amendments in this group were accepted. The Deputy Minister outlined her reasons for not supporting them:

The annual reporting arrangements under the Bill provide the SPC with a regular and reliable source of information to better understand whether public bodies are complying with the duty. In my view, these amendments would undermine what we are trying to achieve in terms of a new way of working...

Socially responsible public procurement

There were 23 amendments in this group, of which the 3 amendments tabled by the Deputy Minister were passed.

The Deputy Minister's amendments reword the language used in the Bill, so the well-being goals listed in Section 4 of the *Well-being of Future Generations Act 2015* are referred to in the Bill as 'well-being goals' rather than 'socially responsible procurement goals'.

Of the remaining amendments, 17 were introduced by Jane Dodds MS, 2 by Joel James MS and 1 by Peredur Owen Griffiths MS. The amendments from Jane Dodds MS and Peredur Owen Griffiths MS sought to include ‘global responsibility’ within the parts of the Bill relating to socially responsible public procurement. Jane Dodds MS **stated:**

I propose that we include an amendment that is focused on global responsibility, particularly around the principles of business and human rights. I’m aware that the Welsh Government states that the proposal to ensure public bodies follow the United Nations guiding principles on business and human rights is a reserved matter and therefore cannot be included within this legislation. However, the national action plan for the UK states that devolved administrations may develop their own action plans or strategies in support of this plan and in line with the commitment to implement the UNGPs.

One of Joel James MS’s amendments would have removed the requirement for public bodies subject to the duty (known as contracting authorities) to take all reasonable steps to meet their socially responsible procurement objectives when undertaking prescribed procurements. The other would not have allowed public bodies to significantly increase their purchase costs due to products being bought locally.

The Deputy Minister did not support any of the Member amendments in this section, and none of them passed. In respect of the amendments around global responsibility, she **outlined** the Welsh Government will produce statutory guidance. This will ensure that procurement does not support illegal and unethical practice overseas. A number of non-governmental organisations in this field have also made practical suggestions such as seconding staff to support work.

In relation to Joel James MS’s amendments, the Deputy Minister told the Committee that removing the requirement for public bodies to take all reasonable steps to meet its objectives would weaken this part of the Bill. She said that sometimes “doing the right thing will cost more” so public bodies should not just be making procurement decisions based on the lowest price.

Social public works clauses

There were 10 amendments in this group, of which 6 were tabled by Joel James MS, and 4 by Peredur Owen Griffiths MS.

Peredur Owen Griffiths MS’s amendments proposed that the employment model social public works clause also includes employment opportunities for women, people of colour and LGBT+ people, and that a separate social public works clause is

added for the Welsh language.

The Deputy Minister said that she would not be supporting Peredur Owen Griffiths MS's amendments, but that she would consider these sections of the Bill further prior to Stage 3.

Joel James MS's amendments sought to:

- Include reference to 30 days in the prompt payment improvement category for the social public works clauses.
- Amend the training improvement category so that it read "appropriate training that aims to upskill workers" rather than "appropriate training for workers".
- Remove a number of provisions in section 28 that relate to subcontractors.
- Set timescales for Welsh Ministers to take action and to respond to contracting authorities when they receive a notification from an authority that it does not intend to use the social public works clauses in a major construction contract.

The Deputy Minister did not support these amendments, and noted her view that removing provisions relating to subcontractors would "weaken the contract management duties of this Bill". She felt that timescales and procedures for Welsh Ministers to respond to notifications from contract authorities would be better set out in guidance.

No amendments within this group were passed.

Outsourcing and workforce code

The Deputy Minister's two amendments in this section were passed. They amend section 32 of the Bill, around the public services outsourcing and workforce code. This places a requirement on Welsh Ministers to "consult with such other persons they consider appropriate" when preparing or revising the code.

The other amendment in this section was introduced by Joel James MS. It sought to give the Social Partnership Council the power to direct Welsh Ministers to revise the outsourcing and workforce code, and to require Welsh Ministers to publish the revised code.

The Deputy Minister did not support this amendment. She considered that it did not reflect the role of the Social Partnership Council in advising Ministers.

Social public workforce clauses

Both amendments in this group were introduced by Joel James MS. They sought to remove wording from section 34 of the Bill which requires contracting authorities to take all reasonable steps to ensure that social public workforce clauses are implemented in subcontracts.

The Deputy Minister did not support these amendments, neither were passed.

The Deputy Minister **highlighted her view:**

One of the problems that has been identified in the operation of the existing two-tier workforce code is a lack of effective monitoring of the contract conditions during the life of the contract... Removing all but one of these examples of reasonable steps would be to weaken the contract management duties in the Bill.

Procurement strategies

There were 6 amendments in this group, of which 4 were submitted by Peredur Owen Griffiths MS, 1 by Joel James MS and 1 by Jane Dodds MS.

Peredur Owen Griffiths MS set out his proposals to include additional information in local procurement strategies regarding:

- The steps that contracting authorities will take to “encourage and facilitate the procurement of goods and services by local and national suppliers in Wales”.
- The contracting authority’s ambitions to increase the percentage of procurement expenditure spent with local and Welsh suppliers, and the value added to the local and Welsh economies through procurement activities.

In addition, he tabled amendments to require contracting authorities to:

- Wait until they have published their first annual socially responsible procurement report to include the information required in section 38(2) of the Bill; and
- Review their procurement strategy after publishing their first annual socially responsible procurement report.

Jane Dodds MS’s amendment was to include information in the procurement strategy on:

- How the contracting authority has considered the carbon impact of procurement decisions against net-zero targets; and
- How it has given due regard to globally responsible procurement, fair trade and human rights (including gender) and environmental rights.

Joel James MS's amendment was to remove the obligation on contracting authorities to review their procurement strategies each year, and instead require this from "time-to-time".

The Deputy Minister rejected all of these amendments, and they were not accepted. She **explained her reasons** for this, stating that while procurement strategies will need to be reviewed annually to ensure they are up to date, they may not need to be updated. In addition, the Deputy Minister **stated** the amendments around local and national suppliers have no definition, and would be:

...likely to bring the Bill into conflict with our obligations within international trade agreements, such as the World Trade Organization's Government procurement agreement.

Annual reports

There were 2 amendments within this group, 1 from the Minister and 1 from Peredur Owen Griffiths MS.

The Minister's amendment was passed. It sets out examples of information that Welsh Ministers may require public bodies covered by the socially responsible procurement duty (known as 'contracting authorities' in the Bill) to include in their annual reports on socially responsible procurement. This includes providing information to:

- Enable Welsh Ministers to assess the extent to which a contracting body meeting its socially responsible procurement objectives contributes towards achieving the well-being goals.
- Enable Welsh Ministers to assess how the contracting authority's public procurement contributes towards the achievement of the well-being goals (e.g. benefitting the economy of its area for example by awarding contracts to SMEs, taking environmental and other social considerations into account).

The Deputy Minister committed to revisiting her amendment at Stage 3, to take into account the amendment submitted by Peredur Owen Griffiths MS. This amendment would have required annual procurement reports to include:

- A summary of the percentage of contracts awarded to SMEs and voluntary organisations;
- An account of the proportion of procurement expenditure spent with local and national suppliers in Wales;
- A review of the extent to which procurement contributed towards the well-being goals; and

- An annual account of the value added to the local and Welsh economy as a result of procurement activities based on verifiable data.

The Deputy Minister did not support Peredur Owen Griffiths MS's amendment, and it was not passed. She stated:

Instead of placing these information requirements in regulations, as part of subsection 2(e), amendment 83 places these obligations within the requirements of the annual report. My view is that setting these requirements within regulations allows them to be amended more easily and enables a proportionate approach to be taken... The subsection of amendment 83, which refers to local and national suppliers, is also problematic for the reasons that we discussed earlier.

Contracts register

There were 6 amendments in this group, of which 4 were from Peredur Owen Griffiths MS and 2 were from the Deputy Minister.

The amendments tabled by the Deputy Minister were both passed. They amend section 40 of the Bill to require the contracts register of contracting authorities to include information on the address of the contractor's principal place of business, but allow authorities to withhold residential addresses from publication. This responded to recommendation 16 in the Equality and Social Justice Committee's Stage 1 report.

Peredur Owen Griffiths MS's amendments would have required contracting authorities producing a register to include additional information on the sector and activities of the contractor, and on the location of their offices and how many staff they employ in Wales. They also would have given Welsh Ministers regulation making powers to require additional categories of information to be included on the register. As well as the ability to require contracting authorities to include "any other information required to facilitate data gathering and monitoring needed for the setting of procurement targets" on registers.

The Deputy Minister did not support these amendments, and they did not pass. She commented "we would suggest that the annual report and regulations would be a better place to address some of the thinking behind those amendments".

Setting of targets

Peredur Owen Griffiths MS laid 5 amendments that were discussed in this group. These amendments would require Welsh Ministers to set at least one target to increase the value added to the Welsh economy through public sector

procurement, as well as outlining the process through which targets should be set. They would also require the Welsh Ministers to include information in their annual report on progress against targets.

Introducing them, he stated that the lead amendment would implement recommendation 15 of the Equality and Social Justice Committee's **Stage 1 report**, which was accepted in principle by the Welsh Government. He also **said**:

Having worked in industry and in the third sector, everyone sets targets because they want to know where they're going, and that's the whole point of setting a target: to give direction, to give an idea of what our ambition is.

The Deputy Minister did not support these amendments, and they were not passed. The Deputy Minister **gave her reasons** for not supporting the amendments, stating that:

We have held numerous discussions on the best mechanisms for achieving what I believe is a shared ambition. The discussions have also made clear the Government's view that setting targets through legislation is probably not the most fitting, nor possibly effective, way to drive improvement.

Focusing on national metrics and setting targets against these would be unhelpful when each contracting authority has its unique circumstances in terms of its location and remit within Wales, and the types of procurement it undertakes.

Guidance and coming into force

Both amendments in this group were introduced by the Deputy Minister, and were passed.

One amendment requires that the Welsh Ministers consult the Social Partnership Council and "such other persons as they consider appropriate" in relation to guidance on socially responsible procurement. The other clarifies that section 48 of the Bill, which allows the Welsh Ministers to bring the legislation into force, "comes into force on the day after the day this Act receives Royal Assent".

3. Next steps

The Bill began Stage 3 of the legislative process on 24 January 2023. During this stage, Members of the Senedd (including the Deputy Minister) can table amendments to **the Bill as amended at Stage 2**. Amendments tabled can be found **on the Bill page** on the Senedd's website.

The Senedd will consider the amendments tabled at Stage 3 in Plenary on **Tuesday 7 March 2023**.