

Stage 1 report on the general principles of the Social Partnership and Public Procurement (Wales) Bill

November 2022



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Stage 1 report on the general principles of the Social Partnership and Public Procurement (Wales) Bill

November 2022



About the Committee

The Committee was established on 23 June 2021. Its remit can be found at:
www.senedd.wales/SeneddEquality

Current Committee membership:



**Committee Chair:
Jenny Rathbone MS**
Welsh Labour



Jane Dodds MS
Welsh Liberal Democrats



Altaf Hussain MS
Welsh Conservatives



Sarah Murphy MS
Welsh Labour



Ken Skates MS
Welsh Labour



Sioned Williams MS
Plaid Cymru

The following Members attended as substitutes during this inquiry.



Peredur Owen Griffiths MS
Plaid Cymru



Joel James MS
Welsh Conservatives

Contents

Chair's foreword.....	7
Recommendations	9
1. Introduction	14
Committee's approach	14
Other Committees' consideration	15
2. General principles of the Bill.....	16
The need for legislation	18
The Bill's objectives versus outcomes	19
The Committee's view.....	21
General principles.....	21
3. Social Partnership Council.....	22
Role and operations of the SPC	22
Membership of the SPC	24
Representation of non-unionised workers.....	25
Nomination processes for Council representatives	26
Equality, diversity and inclusion in relation to the Council's operations.....	29
The Committee's view.....	30
Role and operation of the Social Partnership Council	30
The SPC's sub-groups.....	31
Nominations and membership of the SPC.....	32
4. The social partnership duty.....	34
Public bodies covered by the duty.....	35
Relationship with the well-being duty	37
The social partnership duty and other existing duties.....	38
Compliance with the duty	38
Separate duties for Welsh Ministers.....	40

The Committee's view.....	41
The Social Partnership duty	41
Enforcement and compliance	41
5. Fair work.....	43
Changes from the Draft Bill	43
Fair work in the Bill as introduced	44
The Committee's view.....	46
Fair work provisions.....	46
6. Socially responsible public procurement.....	48
The socially responsible public procurement duty	48
Globally responsible public procurement	49
Coverage of the procurement duty	50
Measuring the impact of the duty	52
Contract management.....	53
Additional duties	54
Procurement strategies	55
Outsourcing.....	55
The Committee's view.....	55
Socially responsible public procurement.....	55
Coverage of the duty	56
Impact of the duty.....	57
7. Implementation of the procurement aspects	59
Procurement Centre of Excellence	61
Reporting arrangements, investigations and compliance.....	61
Powers to investigate.....	63
Guidance.....	64
The Committee's view.....	65
Implementation of the Bill's vision for procurement.....	65

Working with industry	66
Reporting and compliance.....	67
Powers to investigate.....	67
Guidance.....	68
8. Financial implications and other considerations	69
Financial implications for public bodies.....	69
Regulatory Impact Assessment.....	69
Facility time.....	70
Post-implementation evaluation	71
The Committee's view.....	71
Financial implications and the RIA	71
Facility time.....	71
Post-implementation evaluation	72
Annex A: List of oral evidence sessions.....	73
Annex B: List of written evidence	76

Chair's foreword

This is the first legislative attempt in the devolved era to bring together social partnership, fair work and socially responsible procurement. This approach offers many potential benefits, and most of the Committee support the Bill's general principles. But many key questions about the Bill, and how it will achieve its aims, remain unanswered.

There is a pressing need for greater clarity on what the Welsh Government wants to achieve through the Bill beyond the high-level objective of enhancing the well-being of the people of Wales by improving public services. It needs greater focus on clear, tangible outcomes to deliver on its potential and build on the processes it puts in place.

Placing social partnership on a legal footing would mirror the situation in several neighbouring European countries who have strong workforces and productive economies. It would formalise many of the practices Wales has built up in recent decades, most notably in response to the COVID-19 pandemic.

The Bill sets out a framework to improve public procurement practices which focus on a broader set of values than just cost. The aim of this approach will be keeping more money in circulation locally - helping to build more resilient communities and more vibrant foundational economies. To be truly bold, however, we want to see measurable targets set for procurement, including the proportion of public money spent in Wales.

Implementing the Act, should it become law, will require the Welsh Government to work with the devolved public sector to build capacity, capability and cultural change at a time where budgets are likely to be squeezed. This will require creativity, effective collaboration and leadership. The links with the Welsh Government's broader policy objectives, particularly the transition to Net Zero are also critical. From the response to the energy and food crisis, the reform of agriculture and sustainable land management, this Bill has the potential to provide a framework for action and collaboration.

The work to scrutinise the general principles of this Bill was informed by all who gave evidence. Our sincere thanks goes to them, and to the Welsh Government for their positive engagement

during the introduction of this Bill to the Senedd. We look forward to the Deputy Minister's response to our recommendations for strengthening this important legislation.

Jenny Rathbone MS

Chair of the Equality and Social Justice Committee

Recommendations

Recommendation 1. A majority of the Committee recommend that the Senedd agrees the general principles of the Social Partnership and Public Procurement (Wales) Bill.....Page 21

Recommendation 2. The Welsh Government should work with social partners as a matter of urgency to agree:

- the tangible, headline outcomes that it wants to achieve through this Bill;
- the key metrics that it will use to measure these headline outcomes; and
- a narrative to tie these together into a cohesive vision. Page 21

Recommendation 3. The Welsh Government should more clearly define the role of the Social Partnership Council by working with social partners to agree concise, outcomes-focused, terms of reference for its work. This should be progressed as a matter of priority and no later than one week before Stage 3 proceedings take place.....Page 30

Recommendation 4. The Welsh Government should bring forward amendments to section 7(5) of the Bill at Stage 2 to include either a duty to consult, or seek the approval of, other Social Partnership Council members before making revisions to the Council's procedures.....Page 31

Recommendation 5. In line with the need for a more clearly defined role and terms of reference the Welsh Government should consult social partners on ways of working including whether a 'task and finish' approach would lead to better, tangible outcomes on some issues. The Welsh Government should set out whether it intends to create any additional sub-groups, and if so what role and functions it expects those sub-groups to perform.....Page 31

Recommendation 6. In setting out its intentions as regards the creation of additional sub-groups, the Welsh Government should:

- consult prospective social partners on preferred ways of working including whether a 'task and finish' approach would lead to better outcomes on certain issues; and
- confirm whether it intends to bring forward amendments to include these on the face of the Bill in line with the current provisions relating to the public procurement sub-group. Page 31

Recommendation 7. The Welsh Government should bring forward amendments at Stage 2 to place a requirement on the Wales TUC to nominate a certain proportion of non-affiliated union members to the Social Partnership Council as part of the nomination process.Page 32

Recommendation 8. The Welsh Government should prioritise holding early discussions with social partners to ensure that the processes for appointing the Social Partnership Council includes ambitious requirements for diversity of representation which take into account all protected characteristics and ensure a broad geographical spread.Page 32

Recommendation 9. The Welsh Government should set out in response to this report:

- the evidence it has to substantiate its view that a formal mediation mechanism on the face of the Bill is not required including details of how it has consulted with social partners;
- its preferred mechanism for dispute resolution in instances where public bodies are perceived not to be meeting their obligations under the social partnership duty; and
- guidance on the circumstances in which its preferred mechanism would be used.
..... Page 42

Recommendation 10. The Welsh Government should produce guidance to support public bodies to incorporate fair work into their well-being objectives, and should set out how it expects this guidance to improve the number of public bodies setting fair work-related well-being objectives in the future. This work should be completed ahead of the legislation coming into force.....Page 46

Recommendation 11. The Welsh Government should consider whether the Future Generations Commissioner's Office has sufficient, sustainable funding and resources to give fair work the priority it needs, as envisaged by the Bill. If gaps in the ability of the Commissioner's Office to do this are identified, the Welsh Government should allocate additional resource to enable these to be addressed. This work should be completed before Stage 3 proceedings take place and the Regulatory Impact Assessment should be updated accordingly.....Page 46

Recommendation 12. The Welsh Government should bring forward amendments to section 24(1) of the Bill so that it sufficiently considers the global responsibilities that public bodies have as well as those to their local area.Page 56

Recommendation 13. The Welsh Government should hold discussions with the Office for National Statistics and the Charity Commission to determine whether making Further Education Institutions, Higher Education Institutions and Registered Social Landlords subject to the socially responsible public procurement duty would negatively impact on their national accounting status and/or charitable status. Should there be no impact on these, it should add these bodies to the list of contracting authorities subject to this duty..... Page 57

Recommendation 14. The Welsh Government should set out how it proposes that the Public Sector Equality Duties procurement regulation and the socially responsible procurement duty align, and how it intends to ensure that public bodies subject to both duties understand how the duties will work together..... Page 57

Recommendation 15. The Welsh Government should bring forward amendments at Stage 2 which place a requirement on Welsh Ministers to set targets for the proportion of procurement spent in Wales and spent with specific types of suppliers such as SMEs or social enterprises. While time will be needed for the precise mechanics of data-gathering and monitoring to be worked out, these should be set within one year of implementation of the Act and no later than three years after its coming into force. Page 58

Recommendation 16. The Welsh Government should bring forward amendments at Stage 2 to amend section 40(3) of the Bill to require contracting authorities to include the address of the contractor on the register for each contract and any other information required to facilitate data-gathering and monitoring needed for the setting of procurement targets. Page 58

Recommendation 17. The Welsh Government must prioritise ensuring that the procurement workforce has the capacity and capability to implement the new procurement and contract management duties of the Bill and provide the training necessary to do so. This training should be in place before the coming into force of the legislation and the RIA updated to reflect the estimated costs..... Page 66

Recommendation 18. The Welsh Government should take steps to ensure that public bodies are able to collaborate effectively to build capacity, capability, and expertise by setting out in its response to this report:

- a clarification of the roles and relationship between the Procurement Centre of Excellence and the SPC's procurement sub-group;
- how it intends to ensure that the Procurement Centre of Excellence and SPC's procurement sub-group will play a role in driving the collaboration agenda forward.
..... Page 66

Recommendation 19. The Welsh Government should work with industry bodies and representatives involved in construction procurement to develop robust guidance on how socially responsible procurement obligations and risk should be shared through the whole of the supply chain and also seek to address related cultural and behavioural issues..... Page 67

Recommendation 20. The Welsh Government should set out how it will ensure that reporting requirements in the Bill are streamlined to ensure an appropriate balance between the need to increase transparency; keep the administrative burden placed on public bodies to a minimum; and avoid duplication of reporting requirements from other duties. Page 67

Recommendation 21. The Welsh Government should set out how Welsh Government procurement investigations will interact with existing powers held by the Future Generations Commissioner, and how its approach as envisaged in the legislation will add value and avoid duplication. Page 67

Recommendation 22. The Welsh Government should set out the criteria that would trigger an investigation under section 41 of the Bill and its position on the need to consult the Auditor General for Wales before the commencement of such an investigation. Page 68

Recommendation 23. The Welsh Government should bring forward amendments at Stage 2 detailing the criteria that would trigger an investigation under section 41 on the face of the Bill. Page 68

Recommendation 24. The Welsh Government should make a commitment to publish the statutory guidance in draft form for consideration by stakeholders and the Senedd with a minimum consultation period of six sitting weeks. Page 68

Recommendation 25. The Welsh Government should liaise with public bodies in response to concerns that the RIA underestimates the potential costs arising as a consequence of the Bill and bring forward a revised RIA at the end of Stage 2 to reflect any changes required. Page 71

Recommendation 26. The Welsh Government should work with employers and the trade union movement to understand whether extra facility time will be needed for trade unions to fulfil their obligations relating to the Bill and provide this detail via an updated Regulatory Impact Assessment by the end of stage 2 to reflect the potential costs and benefits of this additional facility time. Page 72

Recommendation 27. The Welsh Government should publish the agenda, minutes and outputs for the Shadow Social Partnership Council. To enable transparency these documents should be published before the end of 2022. Page 72

Recommendation 28. The Welsh Government should publish any work undertaken to evaluate and learn the lessons of the work of the Shadow Social Partnership Council at the earliest opportunity and no later than July 2023. Page 72

1. Introduction

The Bill was introduced in June 2022. We gathered evidence to inform our scrutiny of the Bill from a policy perspective. Other committees have looked at the Bill from a financial and a constitutional perspective.

1. The **Social Partnership and Public Procurement (Wales) Bill** (the Bill) and accompanying **Explanatory Memorandum** was introduced to the Senedd by Hannah Blythyn MS, Deputy Minister for Social Partnership (the Deputy Minister) on 7 June 2022. The **Statement of Policy Intent** was published on 8 June 2022.
2. The Bill was referred by the Business Committee to our Committee for scrutiny with a reporting deadline of 18 November 2022.

Committee's approach

3. The Committee's Terms of Reference for this work were to consider:
 - The general principles of the Bill and the need for legislation to deliver the stated policy intention;
 - The Bill's key provisions (as indicated by section);
 - Any potential barriers to the implementation of the Bill's provisions and whether the Bill takes account of them;
 - 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);
 - Whether there are any unintended consequences arising from the Bill; and
 - The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum).

Other Committees' consideration

4. The Finance Committee took oral evidence from the Deputy Minister on **30 June 2022** and published their report on **18 November 2022**.

5. The Legislation, Justice and Constitution Committee were unable to hold their planned oral evidence session due to the period of National Mourning following the death of Her Majesty the Queen and instead wrote to the Deputy Minister and received a response on **14 October 2022**. The Legislation, Justice and Constitution Committee published their report on **18 November 2022**.

2. General principles of the Bill

The evidence generally supported the Bill but question marks remain over whether it will deliver tangible outcomes. A majority of the Committee support the general principles of the Bill subject to the Welsh Government's response to the points identified.

6. The Bill's Explanatory Memorandum sets out the overarching objective, which is to provide "a framework to enhance the well-being of the people of Wales by improving public services through social partnership working, promoting fair work and socially responsible public procurement".¹ In summary, the Bill makes provision for:

- the establishment of a Social Partnership Council;
- 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 Well-being of Future Generations Act 2015 (the WFG Act 2015);
- 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;

¹ Welsh Government, [Social Partnership and Public Procurement \(Wales\) Bill Explanatory Memorandum](#) – 7 June 2022

- 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 the Welsh Ministers in relation to the Social Partnership Duty and Procurement duty.

7. Most of the evidence we received was supportive of the general principles of the Bill, however, there were some organisations whose support was conditional.²

8. Professor Alan Felstead said there “is much to admire in the tabled Bill in terms of how it strengthens the general principles of social partnership working and promotes consensual decision-making which involves trade unions, employer representatives and government”.³

9. The Wales TUC similarly said: “we strongly welcome the Bill and believe it delivers on the Welsh Government’s commitments to strengthen social partnership and put it on a statutory footing, as well as deliver greater social value from procurement”.⁴

10. Trade unions affiliated to the Wales Trades Union Congress (TUC) were also supportive of the general principles of the Bill. The National Education Union (NEU) Cymru welcomed the Bill viewing it as a “positive means by which Wales can place social partnership on a statutory footing”.⁵

11. Chwarae Teg supported the general principles of the Bill, but believed that it should be aligned with existing equalities legislation to help create a more equal Wales. They wrote that “the potential positive impact of these proposals will only be realised if every opportunity is seized to mainstream equality into the provisions of the Bill and the implementation of new duties”.⁶

12. Community Housing Cymru welcomed the Bill and asked for greater clarity on whether Registered Social Landlords (RSLs) will come under its measures in the future. They argued that the Welsh Government should set out the rationale for RSLs omission from the list of organisations subject to the Bill, and suggested that individual members may act within the spirit of the legislation alongside public bodies already included in the Bill.⁷

² Written evidence, [National Education Union Cymru](#); [Digital Health and Care Wales](#); [TUC Wales](#); [Cwmpas](#);

³ Written evidence, [Professor Alan Felstead](#)

⁴ Written evidence, [Wales TUC](#)

⁵ Written evidence, [NEU Cymru](#)

⁶ Written evidence, [Chwarae Teg](#)

⁷ Written evidence, [Community Housing Cymru](#)

The need for legislation

13. We heard a number of arguments and justifications from stakeholders.

14. Mary Williams from Unite the Union highlighted an example of social partnership during the pandemic when the Treasury, the TUC, and the CBI worked together on the Job Retention Scheme. She argued however that this collaborative approach was not sustained for the duration of the pandemic and that this was partly due to the lack of a statutory underpinning.⁸

15. Professor Ed Heery pinpointed that the Bill would be “more robust, less contingent, dependent, on the wishes of a particular administration or set of Ministers or branch of the public service”. He thought that the Bill had an “important symbolic value in inscribing the principle of social partnership in law, demonstrating to the Welsh public more generally that this is the objective of the Government”.⁹

16. Richard Tompkins and Sue Hill from NHS Wales Employers and Betsi Cadwaladr University Health Board agreed with the need for the Bill highlighting the positive role that social partnership played during the pandemic. Richard Tompkins added that placing it on a statutory footing could “act as a catalyst for moving things forward in a much more co-ordinated way, and a way that wouldn’t happen necessarily just organically”.¹⁰

17. Representatives of fire and rescue authorities argued that the legislation was needed to “complement” existing practices and because current levels of engagement on social partnership could vary.¹¹

18. In contrast, others questioned the need for the Bill. Richard Selby, Chair of the Institute of Directors (IOD) told us that while they appreciated the need “to work together and collaborate” many IOD members questioned whether “the legislation [is] necessary and is the cost return for it necessary?”.¹²

19. Liz Lucas, Head of Procurement for Caerphilly County Borough Council questioned the need for the Bill as “many of the details within the Bill we’re all ready to actively undertake with the current legislation”.¹³

⁸ Equality and Social Justice Committee, Record of Proceedings, [paragraph 292](#) – 4 July 2022

⁹ Record of Proceedings, [paragraph 227](#) – 11 July 2022

¹⁰ Record of Proceedings, [paragraphs 207 – 213](#) – 27 June 2022

¹¹ Record of Proceedings, [paragraphs 308 – 314](#) – 27 June 2022

¹² Record of Proceedings, [paragraph 89](#) – 4 July 2022

¹³ Record of Proceedings, [paragraph 12](#) – 11 July 2022

20. Ben Cottam of the Federation of Small Businesses Wales (FSB Wales) asked whether legislation was needed “from the perspective of bringing businesses and business organisations to the table [...] given that we had been working effectively with a voluntary approach for many years now”. He said that awareness and understanding of the social partnership legislation among FSB members was low:

“On the point of whether this is registering, I think the blunt answer is ‘no’. I have very, very few conversations, if any, that mention social partnership, other than the ones that we would initiate with our members. I think the concept of social partnership, particularly amongst smaller businesses, isn’t particularly well understood. Where it becomes more practical and more understandable is the constituent elements of what social partnership seeks to achieve—so, for instance, fair work [...] among my membership, there is a real keenness to have that conversation about fair work, so legislation at least provides for that consistency, but the understanding of social partnership is very low from what we can see within small and medium-sized enterprises.”¹⁴

The Bill’s objectives versus outcomes

21. The overarching objective of the Bill is to “enhance the well-being of the people of Wales by improving public services through social partnership working”. However, a number of stakeholders were concerned about a lack of clarity regarding how to measure this objective, the broader impact of the Bill and the extent to which the Welsh Government has set out clearly how it intends to measure progress.

22. The Institute of Welsh Affairs (IWA) said that: “Although there is sound theory and international experience underpinning the Bill, there needs to be a focus on outcomes - with monitoring and evaluation a core part of this”.¹⁵

23. Leighton Jenkins of the CBI called for the development of “a narrative around the business case” for the principles and outcomes intended from the Bill.¹⁶

24. Darren Williams of Professional and Commercial Services Union (PCS) said that one outcome of the structures that the legislation seeks to create would be early engagement and resolution of industrial disputes.¹⁷

¹⁴ Record of Proceedings, [paragraph 93](#) – 4 July 2022

¹⁵ Written evidence, [Institute of Welsh Affairs](#)

¹⁶ Record of Proceedings, [paragraphs 103 and 104](#) – 4 July 2022

¹⁷ Record of Proceedings, [paragraph 230](#) – 4 July 2022

25. Nisreen Mansour of Wales TUC argued that greater representation and involvement of workers in discussions around decarbonisation and a 'just transition' to a net-zero carbon economy would be tangible examples of the Bill's objectives being put into practice.¹⁸

26. Kirsty Cumming of Community Leisure UK said that while some aspects of the Bill would necessarily be open to interpretation, "ensuring some degree of consistency and clarity right across the country" would be important in achieving the outcomes that the Bill sets out to achieve.¹⁹

27. On the issue of measurable outcomes and key performance indicators the Deputy Minister told us that theory of change work for the Bill was completed in December 2021 as well as "suggested data for measuring the outcomes in the three main components of the bill – fair work, social partnership and socially responsible procurement. This work is being revisited to reflect the final form of the Bill as introduced and will confirm outcomes in the spring of 2023".²⁰ In subsequent correspondence, the Deputy Minister acknowledged that many of the objectives of the Bill were "not easily quantifiable", and "that work to develop the evaluation framework for the Bill has identified a number of potential high-level outcomes that I would hope to see delivered".²¹ They included: better quality employment and improved service delivery in the public sector; enhanced productivity in the private sector; and more consistent application of good practice in pursuing wellbeing goals through procurement.²²

28. Challenged on the need for legislation the Deputy Minister acknowledged that in many ways the Bill seeks "to formalise and strengthen existing arrangements". She said that giving existing social partnership arrangements a statutory underpinning would yield benefits including greater consistency of approach among public bodies.²³

29. The Deputy Minister argued that in some areas, the Bill went further than existing practices and that the Welsh Government would seek to use guidance accompanying the Bill to "be more explicit about what social partnership means in Wales, and set out those principles and

¹⁸ Record of Proceedings, [paragraphs 232-233](#) – 4 July 2022

¹⁹ Record of Proceedings, [paragraph 140](#) – 11 July 2022

²⁰ Equality and Social Justice Committee, [Correspondence from the Deputy Minister to the Chair regarding Social Partnership and Public Procurement \(Wales\) Bill – 22 July 2022](#)

²¹ Equality and Social Justice Committee, [Correspondence from the Deputy Minister to the Chair regarding Social Partnership and Public Procurement \(Wales\) Bill – 14 October 2022](#)

²² [Correspondence from the Deputy Minister to the Chair regarding Social Partnership and Public Procurement \(Wales\) Bill – 14 October 2022](#)

²³ Record of Proceedings, [paragraph 109](#) – 20 June 2022

expectations regarding the approach, and the shared commitments required from all partners”.²⁴

The Committee’s view

General principles

We note that most of the evidence received supported the general principles of the Bill. However, there are a number of areas where stakeholders suggested changes or emphasised the need for greater Welsh Government support and guidance and these are covered in subsequent chapters. A minority of stakeholders questioned the need for the Bill. In terms of the general principles, a majority of the Committee agree that the Senedd should support the Bill’s passage at Stage 1. One Member disagreed.

Recommendation 1. A majority of the Committee recommend that the Senedd agrees the general principles of the Social Partnership and Public Procurement (Wales) Bill.

The Bill’s overarching aims – to enhance the well-being of the people of Wales by improving public services through social partnership working, promoting fair work and socially responsible public procurement – are admirable but risk remaining unfulfilled unless the Welsh Government sets out how it intends to achieve tangible outcomes in more detail. This must include working with social partners to agree how to measure the impact of the legislation against its stated objectives, should the Bill become law.

The Welsh Government also needs to articulate a clearer and more compelling narrative around the need for the legislation and what it means in practice for social partnership in Wales. We welcome the Deputy Minister’s commitment to be more explicit in this regard.

Recommendation 2. The Welsh Government should work with social partners as a matter of urgency to agree:

- the tangible, headline outcomes that it wants to achieve through this Bill;
- the key metrics that it will use to measure these headline outcomes; and
- a narrative to tie these together into a cohesive vision.

²⁴ Record of Proceedings, paragraph 109 – 20 June 2022

3. Social Partnership Council

The creation of a tripartite Social Partnership Council is at the heart of the proposed legislation. The Welsh Government must ensure that it represents the breadth of the modern workplace and the diversity of Wales today.

30. Section 1 of the Bill establishes the Social Partnership Council (referred to throughout as ‘SPC’ or ‘the Council’). According to the Explanatory Memorandum its core function is:

*"to provide information and advice to the Welsh Ministers on certain matters. This function is wider than merely advising the Welsh Ministers and could include the creation or provision of, among other things, statistics, factual summaries, copies of documents (whether publicly available or otherwise) and so on. There is no explicit restriction on the type of information or advice that the SPC can provide."*²⁵

Role and operations of the SPC

31. While some organisations did not comment on the creation of the SPC, those who did were mainly supportive.²⁶

32. Chambers Wales, NHS Wales Employers and CBI Wales highlighted the role that the Shadow Social Partnership Council played during the coronavirus pandemic during their oral evidence.²⁷

33. TUC-affiliated trade unions welcomed the development of a statutory SPC with the National Union of Rail, Maritime and Transport Workers (RMT) stating that the tripartite approach being taken is welcome and could provide a base for the creation of other forums involving private sector employers and unions.²⁸ NEU Cymru described the SPC as “a sensible means by which to ensure that the Welsh Government can engage with the workforce”.²⁹

²⁵ Social Partnership and Public Procurement (Wales) Bill Explanatory Memorandum – 7 June 2022

²⁶ Written evidence, [Civil Engineering Contractors Association](#), [Colegau Cymru](#), [Equality and Human Rights Commission Wales](#), [Natural Resources Wales](#), [Cwmpas](#), [National Education Union Cymru](#), [the IWA](#)

²⁷ Record of Proceedings, [paragraph 215](#); [paragraph 138](#). – 27 June and 4 July 2022

²⁸ Written evidence, [RMT](#)

²⁹ Written evidence, [NEU](#)

34. Business representative organisations had a more nuanced view. Chambers Wales said that the Shadow Social Partnership Council brought in during the pandemic demonstrated the effectiveness of a “motivated group that could advise Ministers on complicated issues from all angles of society”.³⁰ However, their President Paul Slevin cautioned in oral evidence that “as the pandemic has ebbed away, that hasn’t manifested itself, and, indeed, I think the last few social partnership council meetings have been postponed or cancelled”.³¹ Chambers Wales also argued that the SPC will need a clear mandate and concise agenda.³²

35. Some were concerned that specifying membership of the SPC in the legislation could lead to inflexibility.³³ Ben Cottam of FSB Wales said that formalising the duties and structures of social partnership risked creating “mechanisms that speak to social partnership and aren’t nimble enough to respond to some of the other issues that are facing our members and facing the economy”.³⁴ FSB Wales wants clarification on how the Welsh Government is going to consult businesses on economic issues, and wants the Council to sit alongside a separate mechanism for interaction specifically on economic issues.³⁵

36. The Welsh Local Government Association (WLGA) stated that local government has always been supportive of local and national social partnership arrangements, and it supports the establishment of the Council, but wanted to see streamlining of the wider social partnership structures that already exist.³⁶

37. The IWA stated that while it sees clear benefits to social partnership it will not “be a panacea for workers’ rights”, and monitoring of outcomes achieved by the Bill will be needed, for example around pay, working conditions and public services.³⁷

38. Richard Tompkins of NHS Wales Employers said there needs to be greater consideration of how voices not represented on the proposed SPC are heard, and that if the Council is “too bogged down by bureaucracy...rather than actually looking at outputs and outcomes,” then it would fail.³⁸

39. The Wales TUC’s written evidence expressed concerns in relation to section 7 of the Bill which covering the Council’s meetings, procedures and administrative support. In their view the

³⁰ Written evidence, [Chambers Wales](#)

³¹ Record of Proceedings, [paragraph 96](#) – 4 July 2022

³² Written evidence, [Chambers Wales](#)

³³ Record of Proceedings, [paragraph 236](#) – 27 June 2022

³⁴ Record of Proceedings, [paragraph 109](#) – 4 July 2022

³⁵ Written evidence, [Federation of Small Businesses \(FSB\) Wales](#)

³⁶ Written evidence, [WLGA](#)

³⁷ Written evidence, [Institute of Welsh Affairs](#)

³⁸ Record of Proceedings, [paragraph 222](#) and 289 – 27 June 2022

power under section 7(5) of the Bill which allows the Welsh Government to revise the Council's procedures, could give it "disproportionate" power compared to other members of the SPC.³⁹

40. When asked what the purpose of including this power in the Bill, a lawyer supporting the Deputy Minister said it is "a fairly standard provision".⁴⁰ The Deputy Minister said that SPC members will be invited to comment on draft procedures prior to their publication.⁴¹

41. The Deputy Minister told us that in order to monitor and evaluate the impact of the SPC, "much of the information and advice produced by the Social Partnership Council for Welsh Ministers will be published," adding that the Welsh Government were also "committed to a comprehensive evaluation of the legislation" after implementation.⁴²

Membership of the SPC

42. Section 2 sets out that the membership of the SPC will consist of three types of members: Welsh Government members (comprising the First Minister and any number of Welsh Ministers or Deputy Welsh Ministers, the Counsel General or any member of staff of the Welsh Government), nine representatives of employers in Wales and nine representatives of workers in Wales.

43. We heard a range of views regarding the proposed membership of the SPC with a number of stakeholders calling for additional representation.

44. The Wales Council for Voluntary Action (WCVA) would like to see the voluntary sector represented on the Council, both employer and worker representatives. It considered that engagement with the sector should be one of the foundations of the Council rather than being a tick-box exercise.⁴³

45. Geraint Thomas of South Wales Fire and Rescue Service questioned whether sectors such as his own, and the voluntary sector would be adequately represented on the SPC.⁴⁴ Similarly, Kirsty Cummings of Community Leisure UK expressed concerns around representation (particularly of the voluntary sector) and emphasised the need to understand differences within sectors.⁴⁵

³⁹ Written evidence, [Wales TUC](#)

⁴⁰ Record of Proceedings, [paragraph 79](#) – 3 October 2022

⁴¹ Record of Proceedings, [paragraph 73](#) – 3 October 2022

⁴² Record of Proceedings, [paragraphs 55 and 56](#) – 20 June 2022

⁴³ Written evidence, [Welsh Council for Voluntary Action \(WCVA\)](#)

⁴⁴ Record of Proceedings, [paragraph 332](#) – 27 June 2022

⁴⁵ Record of Proceedings, [paragraph 174](#) – 11 July 2022

46. Cwmpas (formerly the Wales Co-operative Centre) called for social enterprises to be represented on the Council, as significant employers and as representatives of a business model that could make a more significant contribution to achieving the Welsh Government’s well-being goals.⁴⁶

47. Dr Victoria Winckler of the Bevan Foundation argued for membership of the SPC to include independent experts. She said:

“We have a lack of information, in my view, about the labour market in Wales and different aspects of it, and I think there’s a risk—I’m not saying it will happen, but there is a risk that you end up with polarised opinions based on assumptions. I think if it’s going to achieve its full potential, I would like to see people who have expertise in the labour market contributing and sitting around that table. So, for example, if things are said for which there is no evidence, that can be challenged.”⁴⁷

48. On membership of the SPC the Deputy Minister emphasised the need to have a “workable number” of members: “managing it as a council, rather than what I think would become a conference.”. The Deputy Minister added that the tripartite membership as envisioned by the Bill was “the right way forward” and that it would be possible to bring in independent and/or expert voices through the SPC’s sub-groups.⁴⁸

Representation of non-unionised workers

49. The WCVA questioned “how the low level of trade union membership in Wales” will affect the impact of the legislation as “many voices will go unheard by the SPC”. It added that the lack of representation of non-union workers on the SPC was a “serious concern”.⁴⁹

50. Colleges Wales said that selecting worker representatives exclusively from trade unions risked excluding a significant number of workers and could create a “two-tier system of worker voice”.⁵⁰ They highlighted recent statistics which show that in Wales in 2020, the proportion of employees who were trade union members was 31.9 per cent (compared with a UK figure of 23.7 per cent).⁵¹ More recent data published by the UK Government shows that, in 2021, 35.6

⁴⁶ Written evidence, [Cwmpas](#)

⁴⁷ Record of Proceedings, [paragraph 416](#) – 4 July 2022

⁴⁸ Record of Proceedings, [paragraphs 83 and 84](#) – 3 October 2022

⁴⁹ Written evidence, [WCVA](#)

⁵⁰ Written evidence, [Colleges Wales](#)

⁵¹ Figures taken from National Statistics/BEIS, [Trade Union Membership, UK 1995-2020: Statistical Bulletin](#) (May 2021)

per cent of employees in Wales were members of a trade union, with 62.4 per cent of public sector workers in Wales belonging to a trade union.⁵²

51. The Equality and Human Rights Commission (EHRC) Wales also raised concerns, highlighting its research showing that lower-paid workers from ethnic minority communities in the health and social care sectors have limited opportunities to have their voice heard and are less likely to be members of trade unions.⁵³

Nomination processes for Council representatives

52. Section 5 of the Bill sets out the nomination process for SPC members, with section 5(2) stating that the First Minister must seek nominations for worker representatives from the Wales TUC.

53. Generally, we heard two distinct positions on this issue, with the Wales TUC and its affiliates holding one view, and unions not affiliated to the Wales TUC and others holding different views.

54. The Royal College of Nursing (RCN) Wales disagreed with the nomination process for workers representatives and called for changes to section 5 so that non-TUC affiliated unions such as themselves can engage with and be nominated to the SPC. The RCN suggested that this could be done by amending the Bill to allow for nominations from “individuals who the First Minister considers represent staff working from each category of employer” (referred to in section 3 of the Bill) as well as from the Wales TUC. The RCN argued that unless amended, the Bill as drafted “could lead to non-TUC affiliated unions being left out of social partnership in Wales and reduce their ability to cooperate and collaborate”.⁵⁴

55. Colleges Wales also raised concerns about the Wales TUC being the nominating body for worker representatives they consider this risks “privileging the views of union members”.⁵⁵

56. Professor Phil Banfield of the British Medical Association (BMA) Cymru set out their concerns regarding the SPC and the proposed nomination process:

“If its function displaces the work of other social partnership working, then it threatens to slow down, obstruct, get in the way of effective social partnership working that’s taking place, especially in the healthcare sector. It depends

⁵² Department for Business, Energy and Industrial Strategy, [Trade union statistics 2021](#)

⁵³ Written evidence, [Equality and Human Rights Commission Wales](#)

⁵⁴ Written evidence, [RCN Wales](#)

⁵⁵ Written evidence, [Colleges Wales](#)

*who is on that social partnership council. And whereas with the draft Bill, there was a discretion from the First Minister to appoint to the trade union side someone with particular expertise in any particular sector, that's disappeared. So, we would caution and have concerns about the nominating body being the TUC and, especially with regard to health, then potentially excluding the independent unions, i.e. the doctors' and the RCN."*⁵⁶

57. Professor Banfield added that this was particularly important in the field of health:

*"[...] sadly, the record of the NHS in Wales and health boards has been quite patchy with regards to engagement of its staff, and particularly medical staff, and we know that there's a particular association between poor engagement and then poor outcomes. So, we were unclear as to why the process changed between the draft and the publication of the Bill, and it would seem sensible for us either to allow for non-affiliated unions to be able to be nominated or for nominations to not only be from the TUC, depending on what is felt to be the appropriate topic and sector at that time."*⁵⁷

58. The WCVA emphasised that transparency around the nomination and decision-making process was vital "given the potentially huge influence the SPC may wield" and that it was important to ensure that "trade unions who are not affiliated to the governing party are represented".⁵⁸

59. The Wales TUC and NEU Cymru argued that the nomination process currently set out in the Bill were appropriate. The Wales TUC said that it will "need to work with non-Wales TUC affiliated trades unions to ensure they are invested in the SPC's work" in the same way that it currently does for the Workforce Partnership Council. It said that it will establish a 'union side' that democratically determines worker representative nominations to the SPC and also develop protocols for how worker representatives engage with the wider trade union movement.⁵⁹

60. Richard Tompkins of NHS Wales Employers emphasised the need to hear from organisations and sectors not represented on the Council and highlighted that the TUC engaged with non-affiliated organisations such as the Royal College of Nursing in relation to the Workforce Partnership Council.⁶⁰

⁵⁶ Record of Proceedings, [paragraph 311](#) – 4 July 2022

⁵⁷ Record of Proceedings, [paragraph 324](#) – 4 July 2022

⁵⁸ Written evidence, [WCVA](#)

⁵⁹ Written evidence, [Wales TUC](#)

⁶⁰ Record of Proceedings, [paragraph 228 - 230](#) – 27 June 2022

61. Bethan Thomas of Unison argued that the current arrangements in place for the Workforce Partnership Council could be replicated for the SPC:

*"I think it's important to note that we have had non-affiliated unions to the TUC sit in Workforce Partnership Council seats. So, it isn't the fact that they're not having a direct voice on some of these negotiating and consultation bodies. That does happen with the system that is currently in operation."*⁶¹

62. Darren Williams of PCS highlighted the coordinating role of the Wales TUC as:

*"[...]the obvious body to make these nominations as the umbrella organisation of the organised trade union movement—there is a commitment there to talk to the non-affiliated unions and ensure their inclusion in the same way that they are at the moment."*⁶²

63. The WLGA argued that the legislation should recognise employer organisations like themselves in the employer representatives nominations process in the same way that the Wales TUC is acknowledged in the process for worker representatives.⁶³

64. In our first evidence session, the Deputy Minister told us that "there would be an expectation that the nominations wouldn't just be in respect of those trade unions that are currently affiliated to the Wales TUC,". Her official noted that the Welsh Government plans to "make it incumbent upon the Wales TUC to bring forward nominations from that wider trade union constituency".⁶⁴

65. We put the concerns of smaller and non-affiliated trade unions to the Deputy Minister again during the second evidence session where she confirmed that the Welsh Government would not be looking to amend the Bill to guarantee representation for non-affiliated trade unions as part of the nomination process:

"Firstly, it's not our intention to amend the Bill to legislate for that. As we said at the outset, our position is we strongly encourage all representative bodies to make diverse and inclusive nominations, as we've come to expect. I know that, during their evidence to this committee, the Wales TUC, or union representatives, intimated a commitment on behalf of Wales TUC to ensure that non-affiliated unions are part of that process and that they ensure their

⁶¹ Record of Proceedings, [paragraph 214](#) – 4 July 2022

⁶² Record of Proceedings, [paragraph 217](#) – 4 July 2022

⁶³ Written evidence, [WLGA](#)

⁶⁴ Record of Proceedings, [paragraphs 79 and 83](#) – 20 June 2022

inclusion, the same way they would do for many aspects of work that we do now as well. [...] I know there is a commitment from Wales TUC to take on board those concerns and to ensure that those unions are part of those conversations and are able to be represented.”⁶⁵

Equality, diversity and inclusion in relation to the Council’s operations

66. EHRC Wales set out a number of equality-related issues in respect of the SPC including that in addition to “a prosperous Wales”, the Council should provide advice to the Welsh Government on other well-being goals, particularly “a more equal Wales”. The EHRC would also like the Welsh Government to provide clarity on how it will ensure the Council has diverse membership. In addition, it called for an Equality and Human Rights sub-group for the Council to ensure that “the promotion of equality and human rights is integral” in delivering fair work.⁶⁶

67. Chwarae Teg called for the Bill to be amended to ensure a gender balanced and diverse Council, and for the Welsh Government to place a requirement on SPC members to demonstrate how they are committed to taking action on gender equality.⁶⁷

68. The WCVA noted that lower levels of trade union membership among workers from ethnic minority communities may mean that their voices could go unheard.⁶⁸

69. The Welsh Language Commissioner’s Office (WLC) told us that prospective members of the SPC should be required to have an understanding of Welsh language issues, and that this requirement should be on the face of the Bill. The WLC’s submission also called for clarity on how the SPC will be subject to Welsh Language Standards, how the Welsh language will be considered in the SPC’s work, and the role that the language will play in its meetings and other work.⁶⁹

70. In terms of the appointments process, the Deputy Minister told us while the Welsh Government had considered adopting “a full public appointments process for the SPC” this was not compatible with the nomination process set out in the Bill. They would, however, consider which aspects of the public appointments process could be mirrored or adopted including the use of job descriptions and person specifications for SPC members.⁷⁰

⁶⁵ Record of Proceedings, [paragraph 100](#) – 3 October 2022

⁶⁶ Written evidence, [EHRC Wales](#)

⁶⁷ Written evidence, [Chwarae Teg](#)

⁶⁸ Written evidence, [WCVA](#)

⁶⁹ Written evidence, [Welsh Language Commissioner](#)

⁷⁰ Equality and Social Justice Committee, [Correspondence from the Deputy Minister to the Chair regarding Social Partnership and Public Procurement \(Wales\) Bill – 22 July 2022](#)

71. On the question of diversity, the Deputy Minister said that the Welsh Government intends to work with social partners ahead of the SPC's establishment to develop diversity requirements for the SPC through its procedures.⁷¹

72. We asked the Deputy Minister to clarify whether the SPC will be subject to the Welsh Language Standards; she said that "procedures will be drafted to provide for use of the Welsh language during SPC business, and be inclusive of Welsh language speakers and promote the use of the language nationally, and that will inform part of the Social Partnership Council's published procedures".⁷²

The Committee's view

Role and operation of the Social Partnership Council

Proposals for the creation of a tripartite Social Partnership Council are at the heart of the Bill. Placing existing social partnership arrangements on a statutory footing presents both challenges and opportunities. We heard that the Shadow Social Partnership Council played an important role during the pandemic and a new SPC, enshrined in law, will hopefully build on its work and provide greater assurance of the Welsh Government's commitment to the principle of social partnership. It must be recognised, however, creating the SPC in and of itself will do little to advance the Welsh Government's overarching objectives unless the Council has a clear focus for its work. It will need concise terms of reference and robust procedures.

We believe that the role and focus of the SPC's work needs to be more clearly defined and that the Welsh Government should work with partners to achieve this as a matter of priority. On procedure, we share the concerns expressed to us that the powers under section 7(5) of the Bill allowing the Welsh Government to revise the Council's procedures risk giving Ministers disproportionate power over other members of the Council and do not reflect the spirit of social partnership being espoused in the legislation. We are clear therefore that the Welsh Government must amend this provision to include either a duty to consult with, or seek the approval of, other SPC members before making revisions to the SPC's procedures.

Recommendation 3. The Welsh Government should more clearly define the role of the Social Partnership Council by working with social partners to agree concise, outcomes-focused,

⁷¹ Record of Proceedings, [paragraph 92](#) – 20 June 2022

⁷² Record of Proceedings, [paragraph 97](#) – 3 October 2022

terms of reference for its work. This should be progressed as a matter of priority and no later than one week before Stage 3 proceedings take place.

Recommendation 4. The Welsh Government should bring forward amendments to section 7(5) of the Bill at Stage 2 to include either a duty to consult, or seek the approval of, other Social Partnership Council members before making revisions to the Council’s procedures.

The SPC’s sub-groups

The provisions for the creation of a public procurement sub-group of the SPC are understandable given the emphasis of the proposed legislation on procurement. It is less clear, however, why this sub-group is prioritised for inclusion on the face of the Bill above any other potential sub-groups. We note that several ideas were put forward for additional sub-groups to cover issues such as the third sector, social enterprises, and fair work. They were also identified by some as a potential way for the SPC to include other, independent voices, technical advice and expertise. We believe that the Welsh Government should set out more clearly its intentions for the creation of additional SPC sub-groups and the role it expects these sub-groups to play. We expect the Welsh Government to set out whether it intends to include provisions for any additional sub-groups on the face of the Bill and if not, outline its reasons.

Recommendation 5. In line with the need for a more clearly defined role and terms of reference the Welsh Government should consult social partners on ways of working including whether a ‘task and finish’ approach would lead to better, tangible outcomes on some issues. The Welsh Government should set out whether it intends to create any additional sub-groups, and if so what role and functions it expects those sub-groups to perform.

Recommendation 6. In setting out its intentions as regards the creation of additional sub-groups, the Welsh Government should:

- consult prospective social partners on preferred ways of working including whether a ‘task and finish’ approach would lead to better outcomes on certain issues; and
- confirm whether it intends to bring forward amendments to include these on the face of the Bill in line with the current provisions relating to the public procurement sub-group.

Nominations and membership of the SPC

Individual members of the SPC will play a crucial role in shaping the future social partnership agenda in Wales if this Bill becomes law. We heard concerns, however, with regards to the process for nominating and appointing its members, particularly on the employee side. Unlike the Draft Bill, the provisions of the Bill as introduced mean that the First Minister can only appoint employee representatives that have been nominated by Wales TUC Cymru. Limiting the nominations solely to those nominated by the Wales TUC could risk leaving a significant number of workers, including the non-unionised, without a voice on the SPC. Furthermore other trade unions who are not affiliated to the TUC raised concerns about the implications of the proposed nomination process on some sectors with a high concentration of non-affiliated unions but who form a significant part of the public sector in Wales including healthcare.

There are existing processes to involve non-affiliated trade union members, most notably with regards to the Workforce Partnership Council. These processes could be adopted for the SPC and we welcome the assurances received in that regard from the Wales TUC. Verbal assurances, however, are no substitute for legal provisions. We would like to see provisions for non-affiliated trade union members strengthened. The most straight forward way to achieve this would be to amend the Bill and place a requirement on the Wales TUC to nominate a certain proportion of non-affiliated union members to the SPC as part of the nomination process. This would provide a legal safeguard which we think would go a long way to addressing the concerns of non-affiliated trade unions and the members they represent.

Recommendation 7. The Welsh Government should bring forward amendments at Stage 2 to place a requirement on the Wales TUC to nominate a certain proportion of non-affiliated union members to the Social Partnership Council as part of the nomination process.

It is vitally important that membership of the SPC represents the diversity of the Wales of today and of tomorrow. To help to achieve this, the Welsh Government should play a leading role in setting and agreeing ambitious requirements in terms of diversity of representation in the appointments made to the SPC. As well as aiding transparency, the publication of job descriptions and person specifications for SPC members could also help to attract a more diverse range of nominees and we welcome the fact that the Deputy Minister is looking into this in more detail.

Recommendation 8. The Welsh Government should prioritise holding early discussions with social partners to ensure that the processes for appointing the Social Partnership Council

includes ambitious requirements for diversity of representation which take into account all protected characteristics and ensure a broad geographical spread.

4. The social partnership duty

If the Bill becomes law, a new social partnership duty will require many devolved public bodies to “seek consensus or compromise” in certain circumstances.

73. Sections 16 to 19 cover arrangements for the creation of a new social partnership duty on certain public bodies. The new duty created by section 16 would require specified public bodies to, in so far as is reasonable, “seek consensus or compromise” primarily with their recognised trade unions when setting wellbeing objectives and making decisions of a strategic nature to achieve those objectives under the Well-being of Future Generations Act 2015.⁷³ Where a public body does not have a recognised trade union, they must “seek consensus or compromise” with representatives of its workforce.

74. A number of organisations welcomed the introduction of this duty including NEU Cymru, Unite the Union, GMB, the IWA, Colleges Wales, EHRC Wales and the WLGA.⁷⁴ The IWA told us that a duty to “seek consensus and compromise” could provide an additional incentive for public bodies who do not have formal social partnership arrangements to establish these, and that the duty to jointly publish an annual report agreed with workforce representatives is key.⁷⁵

75. Darren Williams of PCS told us that the new duty “takes the culture that we’ve built up in Wales over the last decade or so to another level and ensures that there is recourse for any concerns that unions or anyone else might feel exist about the arrangements with employers”.⁷⁶

76. The WLGA said that the duty offers an opportunity to develop a consistent understanding of social partnership to inform practice across different organisations.⁷⁷

77. Colleges Wales argued that the duty has the potential to increase the impact of well-being objectives of the Well-being of Future Generations Act 2015 (WFG Act 2015).⁷⁸

78. The WCVA and Wrexham County Borough Council raised concerns about the introduction of the duty. The WCVA believed that, while public bodies should seek consensus with staff, this

⁷³ Explanatory Memorandum; see also the [Well-being of Future Generations Act 2015](#)

⁷⁴ Written evidence, [NEU Cymru](#); [Unite the Union](#); [GMB](#); [the IWA](#); [Colleges Wales](#); [EHRC Cymru](#); [WLGA](#)

⁷⁵ Written evidence, [the IWA](#)

⁷⁶ Record of Proceedings, [paragraph 228](#) – 4 July 2022

⁷⁷ Written evidence, [WLGA](#)

⁷⁸ Written evidence, [Colleges Wales](#)

should not just involve trade unions. WCVA also said that seeking consensus between public bodies and unions should not involve compromise on areas such as equality and environmental commitments.

79. Wrexham County Borough Council stated that the duty has the potential to “unfairly elevate” the contribution of trade unions above other stakeholders that public bodies engage with in developing their well-being objectives. They called for greater clarity around the wording of the duty stating that “the word ‘seek’ is ambiguous and it is not clear what process would be followed if consensus could not be reached”. They argued that where an employer and trade unions have different objectives, reaching a consensus may be unachievable.⁷⁹

80. EHRC Wales and Audit Wales both called for clarification on what the new duty will mean in practice. Both organisations called for further guidance on what “decisions of a strategic nature” means in practice, and Audit Wales would like Ministers to set out how “consensus and compromise” can be achieved in social partnership to meet this element of the duty.⁸⁰

81. How to apply the new duty in practical terms was a key question for the Bevan Foundation. Dr Victoria Winckler said:

“The principle of duties—it’s not something you can object to, but I think the challenge is turning that into practical action, and I think there needs to be policy development that looks at the how.[...] It’s all very well saying, ‘Here’s a duty’, but I think because this is in fairly uncharted territory, I think there needs to be more about the how and also probably help to grease the wheels to help people to find solutions, help the public bodies to find the solutions that they’re being asked to find. I mean, it would be lovely if there was some sort of innovation fund around this to help and support people to develop solutions.”⁸¹

Public bodies covered by the duty

82. Some stakeholders called for additional public bodies to be covered by the new duty. NEU Cymru called for further and higher education institutions and the Tertiary Education and Research Commission for Wales to be added to the list of bodies covered by the duty.⁸²

⁷⁹ Written evidence, [Wrexham County Borough Council](#)

⁸⁰ Written evidence, [EHRC Wales](#); [Audit Wales](#)

⁸¹ Record of Proceedings, [paragraph 426](#) – 4 July 2022

⁸² Written evidence, [NEU Cymru](#)

83. The Wales TUC argued that this Bill and the WFG Act 2015 should be amended so that “the entire public sector can benefit”, including schools.⁸³ This view was echoed by Bethan Thomas of Unison who expressed disappointment that the duty did not extend to governing bodies of schools, higher and further education. She said: “If there was ever a sector that could benefit from developing social partnership moving forwards, it is that sector”.⁸⁴

84. The RMT welcomed the proposals to include Transport for Wales under the scope of the Bill, subject to the outcome of the Welsh Government proposal to make it and seven other public bodies subject to the WFG Act 2015.⁸⁵

85. The TUC, PCS, Unison, Unite and GMB all agreed that other public sector organisations such as the further and higher education sectors, RSLs and the Welsh Ambulance Service NHS Trust should be considered for inclusion under the scope of the legislation.⁸⁶

86. During our first session with the Deputy Minister, we were told that the definition of higher and further education institutions for the purpose of national accounts made it difficult for them to be covered by the duty. An official for the Deputy Minister said:

“The Office of National Statistics is the body that defines which are public sector organisations, which are private and which are these odd kind of middle category not-for-profit institutions serving households—NPISH. And currently, both FE and HE institutions—I can't speak for RSLs—are classified as not-for-profit institutions serving households. I don't think the ONS interest in that question has ever gone away, really. So, whereas we legislated some time ago, it is still eminently possible that another route, albeit we have a route within the legislation for regulation so it might change the status of FE, HE or RSLs in the future, another route might be outside our control in the form of any current or future reviews by ONS as to the status of those bodies for national accounting purposes.”⁸⁷

87. The Deputy Minister and her official expanded on this in the second evidence session, during which she confirmed that the Welsh Government had not held discussions with the Office for National Statistics on this matter.⁸⁸

⁸³ Written evidence, [Wales TUC](#)

⁸⁴ Record of Proceedings, [paragraph 235](#) – 4 July 2022

⁸⁵ Written evidence, [RMT](#)

⁸⁶ Record of Proceedings, [paragraphs 259 – 264](#) – 4 July 2022; [paragraph 379](#) – 4 July 2022

⁸⁷ Record of Proceedings, [paragraph 50](#) – 20 June 2022

⁸⁸ Record of Proceedings, [paragraph 113](#) – 3 October 2022

Relationship with the well-being duty

88. The Welsh Government recently reviewed the coverage of the well-being duty in the WFG Act 2015, and has consulted on potentially making another eight bodies subject to this duty.⁸⁹ This is relevant to the social partnership duty, as to be covered by this duty a body must be classed as a public body under section 6(1) of the WFG Act 2015. The consultation also included details of the criteria the Welsh Government uses to decide whether a body should be subject to the WFG Act 2015.

89. These criteria are that a body subject to the WFG Act 2015 must be a public body; that it is over 50 per cent publicly funded; that it undertakes actions that impact on economic, social and well-being in Wales or their local area; that it has strategic functions; and that the Auditor General has the authority to audit it.

90. The Welsh Government set out its rationale for not including other bodies in the consultation document, stating that, in respect of Higher Education Institutions (HEIs) and Further Education Corporations (FECs):

"HEI and FECs are excluded because they are Non-profit institutions serving households independent of government control and they are not auditable.

The Tertiary Education and Research (Wales) Bill ('the Bill') provides for the establishment of a new Commission for Tertiary Education and Research. The Commission for Tertiary Education and Research will be the regulatory body responsible for the funding, oversight and regulation of tertiary education and research in Wales. The Bill provides for the dissolution of the Higher Education Funding Council for Wales which is one of the existing public bodies subject to the individual body well-being duty. These duties will transfer to the new Commission.

In addition, the Bill creates a duty for the Commission to promote the pursuit of a civic mission by tertiary education providers in Wales that are institutions within the higher and further education sectors. 'Civic mission' is defined in subsection (3) as, 'action for the purpose of promoting or improving the economic, social, environmental or cultural well-being of Wales (including

⁸⁹ Welsh Government, Consultation on the additional public bodies subject to the well-being duty (Part 2) of the Well-being of Future Generations (Wales) Act 2015

*action aimed at achieving any of the well-being goals in section 4 of the Well-being of Future Generations (Wales) Act 2015 (anaw 2))’.*⁹⁰

91. Registered Social Landlords are also not included under the scope of the WFG Act 2015 by the Welsh Government due to the varied levels of public funding they receive.⁹¹

The social partnership duty and other existing duties

92. In placing a new social partnership duty on public bodies, it was noted by Chwarae Teg that these legal duties overlap in some instances. They told us that more work would be needed to align public bodies’ processes and to minimise duplication and pressure on resources. Furthermore they argued that the alignment of reporting duties for this Bill, Welsh Specific Equality Duties and the WFG Act 2015 would help to “bring in the equalities analysis that we believe is critical”.⁹²

93. Similarly EHRC Wales described “potential synergies” in aligning the social partnership duty with the Public Sector Equality Duties while expressing concern that there are not referred to either in the Bill or the Explanatory Memorandum.⁹³

94. The Wales TUC has suggested that the Bill could be amended to allow for future expansion of the social partnership duty so that it requires public bodies to consult with trade unions in relation to the Public Sector Equality Duties and the Socio-Economic Duty.⁹⁴

Compliance with the duty

95. Section 18 requires each public body to produce annual reports setting out compliance with the social partnership duty.

96. The Bevan Foundation highlighted “very limited evidence that the imposition of duties on public bodies results in material improvements” and that it can encourage public bodies to engage in a “tick-box” exercise.⁹⁵ An Audit Wales report on Equality Impact Assessments

⁹⁰ Welsh Government, [Consultation on the additional public bodies subject to the well-being duty \(Part 2\) of the Well-being of Future Generations \(Wales\) Act 2015](#)

⁹¹ Welsh Government, [Consultation on the additional public bodies subject to the well-being duty \(Part 2\) of the Well-being of Future Generations \(Wales\) Act 2015](#)

⁹² Written evidence, [Chwarae Teg](#)

⁹³ Written evidence, [EHRC Wales](#)

⁹⁴ Written evidence, [TUC Wales](#)

⁹⁵ Record of Proceedings, [paragraph 410 and 411](#) – 4 July 2022; [Bevan Foundation “Our view on the Draft Social Partnership Bill](#)

published in September 2022 expressed similar concerns in relation to assessments carried out under the Public Sector Equality Duty.⁹⁶

97. Our trade union witnesses had little appetite for the idea of financial penalties or sanctions as means of ensuring compliance. PCS described the suggestion as “counterproductive” and Mary Williams of Unite said it was “a tough argument in the current climate”.⁹⁷

98. Bethan Thomas of Unison argued that while compliance was challenging, learning lessons from elsewhere would be necessary:

“I think it is very difficult, when we’re talking about public money, to say that there should be fines associated with anything like that, because, essentially, we’re talking about public money just being recycled. But I think it is something that should be considered as part of the discussions around the Bill about what compliance could look like, how we strengthen that reporting duty.”⁹⁸

99. Nisreen Mansour from the Wales TUC called for the development of “an ACAS-style body” to be explored further and said that the focus should be about building relationships.⁹⁹

100. Tom Hoyles from GMB supported a mediation-focused approach stating that: “We’d be very open to that...framing it around conflict resolution is what we do, what we work best with, and I think we’d be broadly in favour of that”.¹⁰⁰ Mary Williams of Unite also voiced her support for this approach.

101. Professor Philip Banfield of BMA Wales raised concerns about the ability of public bodies and unions to agree on social partnership reports in sectors such as healthcare where there are a large number of unions and additional complexities.¹⁰¹

102. Responding to concerns that the new duty could become a tick-box exercise, the Deputy Minister told us that this was something they were “alive to when drafting the legislation”. Her official expanded on this point:

“It’s a common criticism of Government, isn’t it, that we tend to adopt a sort of catapult approach to policy development and implementation? We come

⁹⁶ Audit Wales, [Equality Impact Assessments: More than a Tick Box Exercise?](#)

⁹⁷ Record of Proceedings, [paragraph 239 and 348](#) – 4 July 2022

⁹⁸ Record of Proceedings, [paragraph 237](#) – 4 July 2022

⁹⁹ Record of Proceedings, [paragraph 241](#) – 4 July 2022

¹⁰⁰ Record of Proceedings, [paragraph 356](#) – 4 July 2022

¹⁰¹ Record of Proceedings, [paragraph 338](#) – 4 July 2022

*up with what sound like impressive policies within Government, we chuck them over the walls and we expect something to happen with them; we expect public bodies or others out there to deliver on the promises that we've made as a Government. We're not doing that in this case. We're seeking here to put in place the mechanics, the nuts and bolts, of a system that will allow us to drive improvement over time, which will allow us to track how well the system is performing, will allow us to measure to what extent social partnership is in fact contributing to the improvement of well-being through, in part, the improvement of public services in Wales."*¹⁰²

103. In response to our request to outline the Welsh Government's approach if the SPC were to receive a substantial number of requests to mediate where the social partnership duty has potentially not been met, the Deputy Minister said: "Mediation is not a function of the Social Partnership Council".¹⁰³

Separate duties for Welsh Ministers

104. Section 17 of the Bill creates a separate social partnership duty for Welsh Ministers which does not require them to consult with trade unions or the Social Partnership Council in developing their well-being goals.

105. The Deputy Minister argued that the process for setting well-being objectives by Welsh Ministers meant that a separate duty was necessary and that "to do otherwise would obviously undermine the democratic process".¹⁰⁴ The Deputy Minister reiterated her view that a separate duty was "appropriate" during the second evidence session, and argued that "other bodies, which include local authorities are not set[-]ing their well-being objectives] within electoral timescales" leading to an approach which was "more general in nature".¹⁰⁵

106. Audit Wales stated that if the argument for a separate duty for Welsh Ministers is accepted, a separate duty for elected local authorities where the controlling group has been elected after issuing a clear policy manifesto should also be considered.¹⁰⁶

107. The Wales TUC's submission similarly argued that Welsh Ministers should be under a duty to consult with the SPC on its well-being objectives describing the separate duty as an "odd

¹⁰² Record of Proceedings, [paragraphs 35 and 36](#) – 3 October 2022

¹⁰³ Equality and Social Justice Committee, [Correspondence from the Deputy Minister to the Chair regarding Social Partnership and Public Procurement \(Wales\) Bill – 14 October 2022](#)

¹⁰⁴ Record of Proceedings, [paragraph 50](#) – 20 June 2022

¹⁰⁵ Record of Proceedings, [paragraph 124](#) – 3 October 2022

¹⁰⁶ Written evidence, [Audit Wales](#)

exception to the principles behind the SPC's role and the idea that social partners should have a role in relation to setting well-being objectives".¹⁰⁷

The Committee's view

The Social Partnership duty

The proposed Social Partnership duty should help to bring about greater consistency in social partnership arrangements across a significant proportion of the public sector in Wales. However, which organisations within the devolved public sector are covered by the duty was a key area of contention. We heard calls, primarily from trade unions, for extension of the duty to cover other bodies in receipt of significant public funding, including further and higher education institutions, and Registered Social Landlords. According to the Deputy Minister, however, this is made difficult by their status under Office for National Statistics rules as *not-for-profit institutions serving households* rather than being classed as within the public sector.

We note these potential challenges around the accounting status of organisations, however we consider it to be anomalous that this is used by the Government as a key determinant of whether organisations in receipt of considerable public funding are covered by this important duty.

Furthermore, the Welsh Government has clear criteria for making further bodies subject to the well-being duty in the WFG Act 2015 including: that they are at least 50 per cent publicly funded; undertake strategic functions; and that the Auditor General has the authority to audit them.¹⁰⁸ These criteria have been applied for the recent review and many of the bodies suggested to us for inclusion under this Bill do not meet them.

On balance, we do not recommend making additional bodies subject to the social partnership duty, and have instead prioritised widening the coverage of the socially responsible public procurement duty (addressed later in this report).

Enforcement and compliance

While the evidence on compliance does not favour punitive sanctions or enforcement measures, the Bill is currently silent on the issue of mediation and dispute resolution. In cases where public bodies may not be meeting the duty, we think a more proactive approach is

¹⁰⁷ Written evidence, [Wales TUC](#).

¹⁰⁸ For a full list of criteria see: Welsh Government, [Consultation on the additional public bodies subject to the well-being duty \(Part 2\) of the Well-being of Future Generations \(Wales\) Act 2015](#).

needed. As a first step, the Welsh Government should publish the evidence it has to substantiate its view that a formal mediation mechanism on the face of the Bill is not required, including details of any consultation it has had with social partners. It should also outline its preferred mechanism for dispute resolution including guidance on the circumstances in which its preferred mechanism would be used.

Recommendation 9. The Welsh Government should set out in response to this report:

- the evidence it has to substantiate its view that a formal mediation mechanism on the face of the Bill is not required including details of how it has consulted with social partners;
- its preferred mechanism for dispute resolution in instances where public bodies are perceived not to be meeting their obligations under the social partnership duty; and
- guidance on the circumstances in which its preferred mechanism would be used.

5. Fair work

Since the Draft Bill, the Government changed key provisions relating to fair work. These changes made the provisions broader, but potentially weaker.

Changes from the Draft Bill

108. The Draft Bill included provisions which would have created a “Fair Work Goal” and placed a duty on Welsh Ministers to set and publish fair work objectives, take all reasonable steps to achieve these, and lay an annual report before the Senedd on progress made in achieving objectives. These provisions were replaced by section 20 of the Bill, which amends the “A Prosperous Wales” goal in the WFG Act 2015 to replace “decent work” with “fair work”.

109. Concerns were raised by Professor Alan Felstead and Chwarae Teg about differences in how fair work was included in the Draft Bill and the Bill as introduced. Chwarae Teg questioned the extent to which the new provisions of the Bill as introduced would drive meaningful change.¹⁰⁹ Similarly, Professor Felstead told us that the changes had the potential to weaken the Bill, as the approach taken placed fair work alongside other competing priorities within the “A prosperous Wales” goal and could weaken outcomes. Professor Felstead also stated that “what gets defined gets done”, and expressed concern that there is no definition of fair work in the Bill introduced into the Senedd although he thought this may be to do with the boundaries of the devolution settlement.¹¹⁰

110. FSB Wales suggested that the definition of fair work developed by the Fair Work Commission does not fit within the current devolution settlement, and questioned whether instead of giving the definition legal force, a better approach would be to use it as a governing principle to shape the legislation.¹¹¹

111. The Deputy Minister considered the current provisions to be an improvement on the Draft Bill as they covered public bodies and not just the Welsh Government, reflecting the role that

¹⁰⁹ Written evidence, [Chwarae Teg](#)

¹¹⁰ Record of Proceedings, [paragraph 234](#) – 11 July 2022

¹¹¹ Written evidence, [FSB Wales](#)

public bodies have in leading by example, and did not introduce separate reporting requirements.¹¹²

Fair work in the Bill as introduced

112. Section 20 of the Bill amends the “A Prosperous Wales” goal in the WFG Act 2015 to replace “decent work” with “fair work”. The provision places requirements on public bodies to consider fair work when setting and taking action to meet objectives designed to maximise their contribution to achieving the overarching well-being goal.

113. A number of bodies welcomed this approach including EHRC Wales, the RMT, the IWA, Colleges Wales, and the WCVA.¹¹³

114. Civil Engineering Contractors Association (CECA) Wales told us that “the principles of ‘fair work’ or ‘decent work’ should apply to all workers in Wales not just those in the public sector,” and that the Bill would need to address the “potential anomaly between lowest price awards for construction contracts and ensuring decent work”.¹¹⁴

115. Shân Morris and Helen Rees representing fire and rescue authorities argued against a ‘one-size-fits-all’ approach to the fair work objective and highlighted the different employment models and structures of their sector (with many firefighters being retained on an on-call basis) as an example.¹¹⁵

116. The Deputy Future Generations Commissioner (DFG Commissioner), Marie Brousseau-Navarro, said that “one of the most striking findings” from analysis of well-being objectives was that public bodies focus on employment and economic growth, but have largely not included objectives on ‘decent work’. She noted that:

“The Welsh Government was the only public body that had specific well-being objectives to tackle regional inequalities and promote fair work, so the only one with a specific reference to fair work or decent work, and Cardiff had made references to being a real living wage employer.”¹¹⁶

¹¹² Record of Proceedings, [paragraph 120 to 123](#) – 20 June 2022

¹¹³ Written evidence, [EHRC Wales](#); [RMT](#); [the IWA](#); [Colleges Wales](#); [WCVA](#)

¹¹⁴ Written evidence, [CECA Wales](#)

¹¹⁵ Record of Proceedings, [paragraph 350 to 352](#) – 27 June 2022

¹¹⁶ Record of Proceedings, [paragraph 324](#) – 11 July 2022

117. Professor Lydia Hayes and Professor Alan Felstead both called for the creation of a Deputy Fair Work Commissioner within the Future Generations Commissioner's office. Professor Hayes stated that:

*"[...]public organisations are going to need to do reviews of their well-being objectives and their well-being plans due to the change in statute. And it certainly would seem as though this would provide an opportunity for an important stream of work and focus on fair work and the cross-cutting nature of fair work, and accelerating and driving forward various different fair work agendas and different parts of the fair work objective, through a deputy commissioner role."*¹¹⁷

118. This call for the creation of a Deputy Commissioner was echoed by NEU Cymru and Wales TUC.¹¹⁸ Wales TUC argued that this was necessary to ensure the provisions were given sufficient priority and to advise public bodies on the delivery of the revised well-being goal.¹¹⁹

119. While the Deputy Minister was keen to emphasise the "wider reach" of the fair work provisions in the Bill as introduced, she acknowledged that competence issues had led to the change in Welsh Government approach:

*"...the Bill as presented respects and reflects the limits of the current devolution settlement. So, in relation to replicating the fair work duty, the eagle-eyed amongst you will recall that, in the draft Bill, the definition of 'fair work' was actually left blank and we sought to seek input from consultation respondees and partners as to actually how we could make that work within the constraints that we were operating within. But we think actually that our approach now better reflects our belief that promoting fair work can support the link between individual and collective well-being, it reflects the important role that Welsh public bodies have in leading by example, and it also goes some way, which is important, on the recommendation that was actually made by the Fair Work Commission to incorporate fair work into the Well-being of Future Generations Act. So, that goes back again to aligning that approach, and we think it's more aligned to the thinking of the standalone duty that's already proposed in the Bill."*¹²⁰

¹¹⁷ Record of Proceedings, [paragraph 301 and 302](#) – 11 July 2022

¹¹⁸ Written evidence, [NEU Cymru, Wales TUC](#).

¹¹⁹ Written evidence, [Wales TUC](#).

¹²⁰ Record of Proceedings, [paragraph 122](#) – 20 June 2022

120. In relation to a Deputy Commissioner for Fair Work, the Deputy Minister outlined the risk that creating a standalone position “could have the opposite effect to the intention, in terms of creating a silo approach, when what we are looking to do is to actually integrate fair work across what we do and the overall approach towards well-being”.¹²¹

The Committee’s view

Fair work provisions

We understand the frustration of some at the weakening of the provisions relating to fair work between the Bill now and the Bill in draft, but the Bill needs to be within the Senedd’s competence. Furthermore we note that the ultimate approach of requiring all public bodies to consider fair work when setting out to achieve a well-being goal has a much broader potential reach than the original provisions. If this broader approach is to succeed, however, the Welsh Government will need to take action to address the Deputy Future Generations Commissioner’s findings that only two bodies included references to aspects of fair/decent work in the first analysis of well-being objectives. This action should include producing guidance to support public bodies to incorporate fair work into their well-being objectives and include setting out clear expectations to public bodies of the need to improve the number setting fair work-related objectives.

Recommendation 10. The Welsh Government should produce guidance to support public bodies to incorporate fair work into their well-being objectives, and should set out how it expects this guidance to improve the number of public bodies setting fair work-related well-being objectives in the future. This work should be completed ahead of the legislation coming into force.

We heard calls for the creation of a Deputy Commissioner with responsibility for ‘Fair Work’ within the current Future Generations Commissioner’s office. Given the need to ensure that fair work is prioritised within the well-being goals the Welsh Government should consider whether the Future Generations Commissioner’s office has sufficient, sustainable funding and resource to give fair work the priority it needs, as envisaged by the Bill’s proposals.

Recommendation 11. The Welsh Government should consider whether the Future Generations Commissioner’s Office has sufficient, sustainable funding and resources to give fair work the priority it needs, as envisaged by the Bill. If gaps in the ability of the Commissioner’s

¹²¹ Record of Proceedings, paragraph 135 – 3 October 2022

Office to do this are identified, the Welsh Government should allocate additional resource to enable these to be addressed. This work should be completed before Stage 3 proceedings take place and the Regulatory Impact Assessment should be updated accordingly.

6. Socially responsible public procurement

Harnessing the power of public sector procurement to deliver wider social benefits has been a priority for the Welsh Government for many years. According to the Explanatory Memorandum, this Bill will enable them to take “greater strides forward” in this area.

The socially responsible public procurement duty

121. Section 24 sets out an overarching duty on contracting authorities (i.e. those listed in Schedule 1 to the Bill) which requires them to seek to improve the economic, social, environmental and cultural well-being of their respective areas by carrying out public procurement in a socially responsible way.

122. The section introduces a category of public procurement in respect of “prescribed contracts”, which fall into three categories:

- Major construction contracts (defined in section 25);
- Outsourcing services contracts (defined in section 26);
- Any other public contract described in regulations by the Welsh Ministers.

123. A number of organisations set out their support for this part of the Bill, including CECA Wales, Colleges Wales, FSB Wales, EHRC Wales, the RMT, NEU Cymru, and the IWA.¹²²

124. Geraint Thomas of South Wales Fire and Rescue Authority highlighted the potential benefits of the legislation, particularly the procurement duty, in terms of ensuring greater levels of consistency across the public sector:

“The real benefit for me, in terms of the legislation, is that we can use it, or certainly the procurement professionals within services can use it, to ensure that we do it in the proper manner and things are done correctly and within the legal frameworks, because, with the best will in the world, if you allow

¹²² Written evidence, [CECA Wales](#), [Colleges Wales](#), [Wales TUC](#), [EHRC Wales](#), [RMT](#), [NEU Cymru](#) and [IWA](#)

staff, not just in the fire sector but probably in all the public sector—if they were given the freedom, they'd just go out and buy what they want through the least path of resistance. They wouldn't follow the procurement procedures. They would just get it the easiest route they could possibly get it, not necessarily look for the cheapest, but the easiest route to get what they want. Having this legislation only adds to what we're already trying to achieve, and it will give us the right outcomes.”¹²³

125. Community Leisure UK called for a move away from “process-driven procurement to “purpose-driven” procurement. Kate Cummings described the Bill “going in the right direction” in its emphasis of the importance of social value.¹²⁴

126. Tomorrow’s Company stated that issues such as “social value and social responsibility can never be assessed by numbers alone.” It added that “there is a strong qualitative element” and emphasised the need for an organisation to have an appropriate culture.¹²⁵

Globally responsible public procurement

127. A number of organisations called on the Welsh Government to expand the socially responsible procurement duty to include globally responsible procurement. In a joint submission, Size of Wales, Cytûn, the Welsh Centre for International Affairs, Fair Trade Wales and WWF Cymru made a number of recommendations including around the need for the Bill to consider global responsibility; training for procurement officers on global procurement impacts; and around carbon emissions targets and measure to address overseas deforestation.¹²⁶

128. They were “deeply concerned” at the wording of section 24 which they argued runs contrary to the WFG Act 2015 and that “there is a danger that the definition of well-being as referring only to “the local area” may come to supersede the much fuller [global] definition”. In their view, this should be addressed by the amendment of section 24 of the Bill to “cross-refer to the duties imposed by the WBFGA 2015”.¹²⁷

129. In relation to global responsibility, the Deputy Minister told us that the legislation links socially responsible procurement directly to the well-being goals, which include global

¹²³ Record of Proceedings, [paragraph 378](#) – 27 June 2022

¹²⁴ Record of Proceedings, [paragraph 200](#) – 11 July 2022

¹²⁵ Written evidence, [Tomorrow’s Company](#)

¹²⁶ Written evidence, [Size of Wales](#), [Cytun](#), [WCIA](#), [FairTrade Wales](#), [WWF Cymru](#)

¹²⁷ Written evidence, [Size of Wales](#), [Cytun](#), [WCIA](#), [FairTrade Wales](#), [WWF Cymru](#)

responsibility and that this link will be clarified in the statutory guidance.¹²⁸ She reiterated this point during our second evidence session.¹²⁹

Coverage of the procurement duty

130. The Wales TUC, other trade unions, EHRC Wales and the Bevan Foundation called for the list of bodies subject to the socially responsible procurement duty to be expanded.¹³⁰

131. EHRC Wales argued that further and HEIs should come under the duty, to ensure consistency between it and the procurement requirements in the Equality Act 2010. They also drew attention to the Public Sector Equality Duty (PSED) procurement duty noting that neither the Bill nor the accompanying documentation currently refers to PSED:

*"It is important for us as the regulator of the PSED and listed public bodies who are subject to the PSED, to understand how the socially responsible public procurement duty and PSED procurement regulation interrelate. We recommend that this point is explicitly referenced within the explanatory memorandum to provide clarity."*¹³¹

132. The Wales TUC called for the Welsh Government to provide greater clarity on whether further and HEIs and RSLs could be included within the scope of the duty.¹³²

133. Audit Wales, however asked whether all bodies that will be subject to the socially responsible procurement duty needed to be included, as many of the additional bodies that are solely subject to this duty have relatively small procurement spend and may be disproportionately impacted by the duty.¹³³

134. Universities Wales told us that not including HEIs within the scope of the socially responsible procurement duty addressed "significant issues" that would have arisen under the proposals in the draft Bill.¹³⁴ Their response to the Welsh Government consultation on the draft Bill described these concerns in detail:

"In relation to universities, some of the proposals may need further investigation to ensure there are no unintended conflicts with charity status

¹²⁸ Equality and Social Justice Committee, [Correspondence from the Deputy Minister to the Chair regarding Social Partnership and Public Procurement \(Wales\) Bill – 22 July 2022](#)

¹²⁹ Record of Proceedings, [paragraph 166](#) – 3 October 2022

¹³⁰ Written evidence, [Wales TUC](#), [EHRC Wales](#)

¹³¹ Written evidence, [EHRC Wales](#)

¹³² Written evidence, [Wales TUC](#)

¹³³ Written evidence, [Audit Wales](#)

¹³⁴ Written evidence, [Universities Wales](#)

*or charity law obligations. As the Charity Commission makes clear, a charity must exclusively pursue its charitable purposes, and not the policies or directions of a governmental authority. Placing a direct requirement on universities to pursue the Welsh Government's well-being or fair work objectives in relation to prescribed contracts as proposed, and the proposed power of the Ministers to require universities to implement works clauses if they disagree with a university's decision not to include them in a major construction contract, would both appear to cause potential problems for universities in meeting their charitable obligations or maintaining their charitable status, and status for purposes of national accounting. Placing a direct requirement on universities in relation the WBFGA 2015 has previously been avoided for this reason. As the draft Bill stands, we think these provisions may need to be redrafted or universities exempted from their direct application to avoid serious adverse consequences."*¹³⁵

135. As mentioned in the previous chapter, according to the Deputy Minister the way in which these institutions are defined made it difficult for them to be covered by the legislation.¹³⁶

136. An official supporting the Deputy Minister also noted that Higher Education Institutions have expressed interest in the procurement approach proposed by the Welsh Government:

*"In recent meetings with HE colleagues around procurement, they've expressed quite a lot of interest in what we're doing. They're actually coming along to some of the workshops, where we're thinking about the foundation of statutory guidance, and really participating, just the same way as any other public body, with a view to participating using the same guidance and doing the same things if and when the Bill becomes law. So, just to reassure this committee that not being listed within the procurement duties doesn't mean that the sector is not interested in the issues that are raised. And, in fact, in some areas, HE in particular I think, has really led the way in the past, and I believe that they would still want to continue to do so."*¹³⁷

¹³⁵ Universities Wales, [Response to the Welsh Government consultation - Draft Social Partnership and Public Procurement \(Wales\) Bill](#)

¹³⁶ Record of Proceedings, [paragraph 50](#) – 20 June 2022

¹³⁷ Record of proceedings, [paragraph 115](#) – 3 October 2022

Measuring the impact of the duty

137. The procurement duties were of particular interest to business organisations. Richard Selby of IOD Wales described procurement as “one of the greatest levers we have to make a huge change in people’s lives”.¹³⁸

138. Chambers Wales called for the Welsh Government to set targets for themselves and public bodies to increase the percentage of procurement spent with Welsh businesses over the next five years and their director identified this as a key indicator for measuring the impact of the Bill.¹³⁹

139. FSB Wales supported the duty and argued that ‘think small business’ principles should guide strategy and implementation. Furthermore, they called for effective guidance for SMEs; for the Welsh Government to build up the competitiveness of firms so they are in a better position to bid for contracts; and for greater understanding that businesses are at different stages of being able to deliver fair work requirements. Chambers Wales also called for guidance for SMEs and greater protections for small businesses against measures that would disadvantage them compared to larger firms through an appendix clause to the Bill.¹⁴⁰

140. Cwmpas raised the need for the Welsh Government to develop social enterprises so they can bid for contracts and would welcome targets being set for the percentage of contracts awarded to social enterprises.¹⁴¹

141. The Open Rights Group’s submission highlighted the potential role of open source software in socially responsible procurement and expressed disappointment that this is absent from the Bill.¹⁴²

142. The Deputy Minister was reluctant to commit to procurement targets citing “difficulties” relating to the “quality and level of the data”. She did however confirm that work was underway to address deficiencies in data collection and analysis.¹⁴³

143. Section 40 of the Bill contains provisions regarding the management, maintenance and publication of a contracts register by contracting authorities including the information and data that must be collected. We asked whether these provisions could be amended to include information regarding the location of contracts and used to measure performance. The Deputy

¹³⁸ Record of Proceedings, [paragraph 111](#) – 11 July 2022

¹³⁹ Written evidence; Record of Proceedings, [paragraph 163](#) – 4 July 2022

¹⁴⁰ Written evidence, [Chambers Wales](#), [FSB Wales](#)

¹⁴¹ Written evidence, [Cwmpas](#)

¹⁴² Written evidence, [Open Rights Group](#)

¹⁴³ Record of proceedings, [paragraph 151](#) – 3 October 2022

Minister replied that the reporting measures of the Bill would be “key” and would give the Welsh Government a “much clearer picture about what is happening and to what extent the duties are making a difference”.¹⁴⁴

Contract management

144. Sections 27 to 31 relate to social public works clauses in major construction contracts. They include requirements for Welsh Ministers to publish model clauses for major construction contracts (sections 27 and 28) which are designed to bring about improvements to economic, social, environmental and cultural well-being. They also place a duty on contracting authorities to take steps to ensure obligations are being met.

145. The evidence identified contract management as an area where performance could be improved. Liz Lucas from Caerphilly Council told us that “contract management isn’t something that’s done well right across Wales”.¹⁴⁵

146. CECA Wales indicated its support for the introduction of the construction management duty, the development of which it had “actively encouraged”. It said that private sector suppliers have “experienced an almost complete non-existence of post-contract scrutiny of socially responsible outcomes”, and that without these provisions, suppliers would be less likely to deliver desired outcomes. They argue that public bodies need to work with the private and third sectors to deliver better outcomes, and suggest that public bodies should publish 12-month forward work programmes to enable suppliers to plan for business opportunities, plan to deliver socially responsible outcomes and establish proposals for longer-term sustainable delivery of these outcomes.¹⁴⁶

147. FSB Wales said that obligations made by larger suppliers are often met by passing pressure further down supply chains to subcontractors, and that this risk should warrant further consideration when proposals are being developed. It believes that duties and desired outcomes should not be lost as you go down the supply chain, and that what is asked of subcontractors should be proportionate, promote progression and not adversely impact on opportunities for SMEs.¹⁴⁷

148. Procurement expert Liz Lucas also raised the poor treatment of SMEs and subcontractors, highlighting the way in which risk is sometimes passed down the supply chain:

¹⁴⁴ Record of Proceedings, [paragraph 130 – 133](#) – 20 June 2022

¹⁴⁵ Record of Proceedings, [paragraph 74](#) – 11 July 2022

¹⁴⁶ Written evidence, [CECA Wales](#)

¹⁴⁷ Written evidence, [FSB Wales](#)

*"That is a fundamental issue in construction that we need to tackle. I still don't understand with the Bill how we tackle that and make sure that the subcontractors who do the work get paid for the work they do. They very much deliver the social value on the ground, not the main contractor, in many cases. I think we've got to be fair to them; we can't keep pushing the risk and all the issues down the supply chain to the local SMEs. I think we've got to change that somehow. So, there's a culture on both sides of the fence."*¹⁴⁸

149. Ed Evans of CECA Wales said in response that the answer lies in changing the culture and practices by bringing the poor performers up to the standards of the best:

*"The legislation can do so much, but if you start to dictate exactly what risks get passed down and which ones don't—that's not a legislative issue for me; that's more an issue of behaviours, culture, good practice, and we have plenty of that, to be honest with you, across the construction industry. What the Bill will do, I think, is push clients to consider that more. It is far too easy to push that risk down the line, because then you push accountability down the line."*¹⁴⁹

Additional duties

150. Sue Hill of Betsi Cadwaladr UHB said that Ministers should allow time to measure implementation of the Bill before considering using its powers under section 24(8) to create additional contract management duties.¹⁵⁰

151. The Deputy Minister outlined the approach to the inclusion of any additional duties:

*"We included contract management duties for major construction projects because construction accounts for around a third of the overall procurement spend by public bodies in Wales, and because we know it has complex supply chains where there is significant risk and potential opportunity around delivering socially responsible outcomes. We will learn from the contract management duty, but we do not currently have any plans to extend it into other specific sectors."*¹⁵¹

¹⁴⁸ Record of Proceedings, [paragraph 51](#) – 11 July 2022

¹⁴⁹ Record of Proceedings, [paragraph 59](#) – 11 July 2022

¹⁵⁰ Record of Proceedings, [paragraph 277](#) – 27 June 2022

¹⁵¹ Equality and Social Justice Committee, [Correspondence from the Deputy Minister to the Chair regarding Social Partnership and Public Procurement \(Wales\) Bill](#) – 22 July 2022

Procurement strategies

152. Section 38 requires contracting authorities to prepare and publish a procurement strategy. Amnesty International welcomed the provisions however, they were disappointed that this did not include reference to the role of procurement in supporting human rights.¹⁵²

153. The Chartered Institute of Building (CIOB) said the strategies could be a “key driver of social benefits” if they are “broken down into smaller, more manageable, affordable packages” as this will remove barriers to SMEs.¹⁵³

154. Cwmpas told us that they would welcome the opportunity to work with public bodies on their procurement strategies and called for a specific target to be set for the percentage of social enterprises winning these contracts.¹⁵⁴

Outsourcing

155. Sections 32 to 37 relate to the social public workforces clauses and the code of practice on outsourcing public services including notification and reporting arrangements.

156. Chwarae Teg told us that proposed public services outsourcing and workforce code “offers an opportunity to put in place requirements around standard terms and conditions of employment to better protect social care workers, and ensure that companies offering fair work are not being undercut by larger, private sector companies”.¹⁵⁵

157. The WLC called on the Welsh Government to include provisions regarding “the right to use Welsh in the workplace and all duties arising from Operating Standards” in the public services outsourcing and workforce code.¹⁵⁶

The Committee’s view

Socially responsible public procurement

We note that much of the evidence received was supportive of the socially responsible public procurement duty with its emphasis on a wider set of values. The duty builds on many years of

¹⁵² Written evidence, [Amnesty International](#)

¹⁵³ Written evidence, [CIOB](#)

¹⁵⁴ Written evidence, [Cwmpas](#)

¹⁵⁵ Written evidence, [Chwarae Teg](#)

¹⁵⁶ Written evidence, [Welsh Language Commissioner](#)

policy and activity designed to harness public procurement spending to deliver wider social benefits.

The evidence was not wholly supportive, however, and there were important concerns relating to an inconsistency in the wording of the Bill and the wording of the Well-being of Future Generations Act 2015. Whereas the 2015 Act refers to the “limits of the global environment”, there were concerns section 24 (1) of the Bill refers only to the need “to improve the economic, social, environmental and cultural well-being of its area,”. The Deputy Minister sought to give reassurance on this issue telling us that the duty is clearly linked to the well-being goals which include global responsibility, and that this will be made clear in statutory guidance. Given the number of organisations working in the sector who expressed concerns on this matter, we would like the Welsh Government to go further and consider bringing forward amendments to section 24 (1) of the Bill so that it sufficiently considers the global responsibilities that public bodies have as well as those to their local area.

Recommendation 12. The Welsh Government should bring forward amendments to section 24(1) of the Bill so that it sufficiently considers the global responsibilities that public bodies have as well as those to their local area.

Coverage of the duty

As with other duties contained in the Bill, we heard calls to expand the socially responsible public procurement duty to cover other public bodies such as Registered Social Landlords, FEIs and HEIs (although Audit Wales specifically queried whether the coverage should be curtailed in this case). We note that the coverage of this duty is wider than that proposed for the social partnership duty, and that while the issues raised above are relevant to the accounting status of these bodies, there would be no need to amend the WFG Act 2015 as any changes can be made by amending Schedule 1 to the Bill.

We also understand the concerns expressed by Universities Wales in their draft Bill consultation response, and clearly would not want to see any negative impacts to organisations’ charitable status or their status as not-for-profit institutions serving households. However, we note that the Welsh Government has not spoken to the Office for National Statistics to understand whether including these bodies as contracting authorities under Schedule 1 would impact on their accounting status. Given that similar reasons were given for excluding Higher Education Institutions from the scope of the WFG Act 2015, the Welsh Government needs to prioritise holding discussions with the Office for National Statistics on this matter so that these bodies, and the Senedd, have clarity on which bodies can be subject to this legislation.

In principle, we believe that bodies such as FEIs, HEIs and RSLs that are in receipt of considerable amounts of public funding should be required to follow Welsh Government procurement legislation in the same way as public sector contracting authorities. However, if there are significant practical difficulties which prevent this, we would not want to see these bodies negatively impacted.

We are mindful that FEIs and HEIs are subject to the procurement duty under the Public Sector Equality Duties, and believe that there is an opportunity for consistency in also including these organisations as contracting authorities in Schedule 1 to the Bill.

Therefore, given the views expressed by stakeholders that Registered Social Landlords, FEIs and HEIs should be subject to the socially responsible procurement duty, we would like the Welsh Government to discuss the potential impacts of this on their accounting and charitable status the Office for National Statistics and Charity Commission respectively, with a view to including them within the scope of the Bill.

The new duty will sit alongside other duties, notably the Public Sector Equality Duties procurement regulation. However, the evidence we received from the EHRC as the regulator suggests that they are unclear as to how these duties will align. The Welsh Government should clarify this so that the regulator and public bodies subject to both duties understand how the duties will work together.

Recommendation 13. The Welsh Government should hold discussions with the Office for National Statistics and the Charity Commission to determine whether making Further Education Institutions, Higher Education Institutions and Registered Social Landlords subject to the socially responsible public procurement duty would negatively impact on their national accounting status and/or charitable status. Should there be no impact on these, it should add these bodies to the list of contracting authorities subject to this duty.

Recommendation 14. The Welsh Government should set out how it proposes that the Public Sector Equality Duties procurement regulation and the socially responsible procurement duty align, and how it intends to ensure that public bodies subject to both duties understand how the duties will work together.

Impact of the duty

To ensure that the aims of the socially responsible procurement duty are realised, some suggested that the Bill should include measures and targets on the proportion of public procurement either spent in Wales or spent with specific types of suppliers such as SMEs or

social enterprises. The Deputy Minister, however, cited difficulties with data collection and analysis that would make it challenging to agree “meaningful” targets in the short term, although we are pleased to note that work is underway to address this in the medium term.

We agree that the Bill should be amended to place a requirement on Welsh Ministers to set procurement targets within one year of implementation of the Act. This approach would allow time for the detailed work on data-gathering and monitoring to take place before targets are set. The Welsh Government should also consider whether any amendments need to be made to the registrable information that contracting authorities are required to keep under section 40(3) of the Bill to facilitate the data-gathering and monitoring needed to set these targets.

Recommendation 15. The Welsh Government should bring forward amendments at Stage 2 which place a requirement on Welsh Ministers to set targets for the proportion of procurement spent in Wales and spent with specific types of suppliers such as SMEs or social enterprises. While time will be needed for the precise mechanics of data-gathering and monitoring to be worked out, these should be set within one year of implementation of the Act and no later than three years after its coming into force.

Recommendation 16. The Welsh Government should bring forward amendments at Stage 2 to amend section 40(3) of the Bill to require contracting authorities to include the address of the contractor on the register for each contract and any other information required to facilitate data-gathering and monitoring needed for the setting of procurement targets.

7. Implementation of the procurement aspects

In order to realise the Bill's ambitions for socially responsible procurement, the Welsh Government will have to work with public bodies, industry and others to build capacity, capability and cultural change.

158. Some of the evidence highlighted the financial and resource challenges associated with implementation of the procurement aspects of the Bill. For example, Jon Rae from the WLGA raised these issues:

*"Just thinking about some of the procurement issues—procurement teams. There's a real issue with capacity, I think, in local government at the minute. In these corporate support-type functions, these are the functions that bore the brunt during austerity, in terms of cuts. There's a real issue with capacity there. But they need to understand what it is that they'll be required to do in the future."*¹⁵⁷

159. Shân Morris from the North Wales Fire and Rescue Service stated that many public bodies face difficulties in recruiting procurement staff, and described procurement managers as being "like hen's teeth", which can lead to inconsistency across public bodies such as fire and rescue services.¹⁵⁸

160. Liz Lucas of Caerphilly Council told us that it was unnecessary for all 22 local authorities to have expertise in every category of spend and that they would need to work together:

*"We need more collaboration, we need more acceptance that there are experts in some local authorities or some public sectors, and allow them to do it, otherwise, we will never, ever meet the obligations of this Bill and be able to deliver on the ground, because there just are not enough of us."*¹⁵⁹

161. Additional support from the Welsh Government to raise the performance of the worst-performing between now and implementation of the Bill was seen as key with both Ed Evans

¹⁵⁷ Record of Proceedings, [paragraph 336](#) – 11 July 2022

¹⁵⁸ Record of Proceedings, [paragraph 376](#) – 27 June 2022

¹⁵⁹ Record of Proceedings, [paragraphs 41 and 42](#) – 11 July 2022

and Liz Lucas highlighting differences in the levels of performance and expertise among Wales' local authorities and the need for a cultural shift.¹⁶⁰

162. Denbighshire County Council said that public bodies, local authorities and the Welsh Government will need to “support and mobilise local supply chains” to ensure they are well positioned to fulfil the requirements of the Bill, once on statute. According to Denbighshire this would require “a coordinated and targeted effort by all local authorities and public bodies, alongside Welsh Government. Local supply chains, especially smaller businesses, will require some form of capacity building to fully understand social value, particularly within tenders where the social value response will need to be evaluated”.¹⁶¹

163. The CIOB highlighted existing mechanisms (in the form of toolkits) used their industry to better understand what social value means in both public and private sector projects. They called on the Welsh Government to “look at existing industry-led mechanisms in place to further strengthen the intentions of the Bill and see the outcomes set out in the procurement process achieved”.¹⁶²

164. Similarly, the British Standards Institute (BSI) submission outlined how the Welsh Government could use standards to support the Bill's aims and gave practical examples of the way in which “significant headway” had been achieved on “the use of standards in improving the efficiency of public procurement”. They outlined the role of the Public Procurement Standard which provides:

*“criteria and guidance that enable potential suppliers to demonstrate their generic trustworthiness, transparency, and ethical practice. At the same time, procuring bodies can use the standard to assess bidders more readily and accurately.”*¹⁶³

165. In relation to staff resourcing, the Deputy Minister told us:

“We will minimise difficulties and maximise positive outcomes if we ensure that the duties can be applied proportionately, which will be supported through the guidance, that we engage with stakeholders during the

¹⁶⁰ Record of Proceedings, [paragraphs 91, 100, 103](#) – 11 July 2022; [paragraphs 108 - 113](#) – 11 July 2022

¹⁶¹ Written evidence, [Denbighshire County Council](#)

¹⁶² Written evidence, [Chartered Institute of Building](#)

¹⁶³ Written evidence, [British Standards Institute](#); see also BS 95009:2019 Procurement to the public sector – generic requirements for organizations providing products and services

development of the guidance, and that we put sufficient resources in place within Welsh Government to support implementation.”¹⁶⁴

Procurement Centre of Excellence

166. Separately from the Bill’s provisions and in addition to the creation of the procurement sub-group of the SPC, as set out in sections 9 and 10 of the Bill, the Welsh Government intends to create a Procurement Centre of Excellence. The Welsh Government’s decision follows recommendations by the Future Generations Commissioner and a panel of experts on the role a Centre of Excellence could play in developing the foundational economy in Wales.¹⁶⁵

167. Liz Lucas from Caerphilly Council raised the importance of the proposed Procurement Centre of Excellence in helping to deliver the socially responsible procurement and contract management duties.

168. The DFG Commissioner told us that she was unclear on how the Centre of Excellence and procurement sub-group (of the SPC) will work together, stating that the Commissioner had advised the Welsh Government not to establish a procurement sub-group, but to instead work directly with the Centre of Excellence.¹⁶⁶

169. A Welsh Government official explained how the envisaged Centre of Excellence and the procurement sub-group of the SPC would work together:

“there are two very different roles. If we’re talking about the procurement sub-group, it’s about accountability, it’s about challenge, it’s about looking at the outcomes. The centre of excellence’s main purpose is in support; providing the tools, techniques, advice and support to the public sector. So, they’re two quite different roles. Clearly, it would help if they worked well together, and that would be the plan.”¹⁶⁷

Reporting arrangements, investigations and compliance

170. Section 39 to 42 deal with reporting arrangements (as they relate to the procurement aspects of the Bill).

¹⁶⁴ Equality and Social Justice Committee, Correspondence from the Deputy Minister to the Chair regarding Social Partnership and Public Procurement (Wales) Bill – 22 July 2022

¹⁶⁵ Future Generations Commissioner, What the Procurement Review means for Public Bodies and Welsh Government

¹⁶⁶ Record of Proceedings, paragraph 345 – 11 July 2022

¹⁶⁷ Record of proceedings, paragraph 175 – 3 October 2022

171. NEU Cymru welcomed the reporting duties, but believed there should be more redress built into the public procurement aims within the Bill, stating that “it seems that sanctions for non-compliance are unclear, and should be very transparent, and incentivise compliance”.¹⁶⁸

172. Ed Evans from CECA Wales said that one of the benefits of the transparency generated by the reporting requirements could be that it raises the standard of public bodies’ procurement as it becomes clearer which authorities are performing well, and which are performing less well. Liz Lucas from Caerphilly Council supported this, noting that it would raise the profile of procurement and “brings about challenge before we’re needing to get into any other serious challenges from other bodies”.¹⁶⁹

173. Audit Wales, on the other hand, expressed concerns arguing that the requirement to summarise the procurement a public body expects to carry out over the next two years to be “onerous”, and with unclear benefits. They also said that the wording used in relation to timescales for producing reports was unclear, and “could lead to a lack of focus”.¹⁷⁰

174. Colleges Wales argued that reporting duties should use the least onerous approach possible, and should be subject to annual feedback and reviews for the first three years after introduction to ensure they are fit for purpose and achieve the intended aims.¹⁷¹

175. The WLGA expressed “some concern about the burden of reporting for local authorities and the resource implications in meeting these demands”. They also noted that the exception reporting required when model clauses relating to construction or outsourcing duties are not used may cause delays to annual reports.¹⁷²

176. The Deputy Minister argued that the transparency generated by regular reporting is a key aspect of this part of the legislation and would give the Government “the leverage to really make a difference in terms of those outcomes from the legislation that we would all collectively want to see, whether that’s around fair work or supporting SMEs in local communities”.¹⁷³

¹⁶⁸ Written evidence, [NEU Cymru](#)

¹⁶⁹ Record of Proceedings, [paragraphs 117 and 119](#) – 11 July 2022

¹⁷⁰ Written evidence, [Audit Wales](#)

¹⁷¹ Written evidence, [Colleges Wales](#)

¹⁷² Written evidence, [WLGA](#)

¹⁷³ Record of Proceedings, [paragraph 12](#) – 20 June 2022

Powers to investigate

177. Section 41 gives the Welsh Ministers the power to investigate how a contracting authority carries out public procurement. Such an investigation can be carried out in relation to a particular procurement or procurement activities more generally.

178. Audit Wales and the Wales TUC raised the lack of clarity regarding the triggering of a procurement investigation by the Welsh Government under section 41. Audit Wales called on the Welsh Government to establish set criteria for this, stating that the Bill should be amended so that “any such investigations should only be undertaken following consultation with the Auditor General”.¹⁷⁴ The Wales TUC also called for greater clarity and in particular asked whether a report from the SPC or a trade union could trigger an investigation into a public body.¹⁷⁵

179. The DFG Commissioner told us that it was unclear how the powers given to Welsh Ministers to undertake procurement investigations would interact with the powers that the Future Generations Commissioner has under section 20 of the WFG Act 2015. She asked why “[do] we need an extra layer and a new system and not integrate this in existing mechanisms”. Marie Brousseau-Navarro also noted that the narrower scope of the powers and questioned the coherence of the Welsh Government’s approach:

“that brings us back to the question of coherence and how this legislation should be more integrated under the Well-being Act, and use existing mechanisms rather than creating new ones, more narrow and more focused, which might go in a different direction from the overarching Well-being Act.”¹⁷⁶

180. Liz Lucas, Head of Procurement for Caerphilly County Borough Council urged Ministers to exercise caution when using the powers contained under section 41 of the Bill:

“This element [of the Bill] worries me a little bit, and I’ve talked about this big stick, because there will be occasions where we will have suppliers who will challenge what we’ve done, or something will go wrong and there will be some form of legal challenge to what we’ve done. And I think we’ve got to be careful with these powers that they don’t deter us and make people frightened of actually going about trying to deliver some of this, so I think it’s with caution. I don’t think it should be a regular occurrence.”¹⁷⁷

¹⁷⁴ Written evidence, [Audit Wales](#)

¹⁷⁵ Written evidence, [Wales TUC](#)

¹⁷⁶ Record of Proceedings, [paragraph 394](#) – 11 July 2022

¹⁷⁷ Record of Proceedings, [paragraph 85](#) – 11 July 2022

181. Responding to the DFG Commissioner's concerns regarding the interaction between the powers in the Bill and the Future Generations Commissioner's existing powers, the Deputy Minister said:

*"The Future Generations Commissioner has review powers rather than investigatory powers, and no powers that are specific to procurement. So, the current commissioner used her review powers to look at procurement, given that it's a function of public bodies captured by the Well-being of Future Generations Act. So, there's no duplication of that function between this Bill and the Well-being of Future Generations Act. A review of procurement was carried out because of the Future Generations Commissioner's view that there are inconsistencies in the way that well-being outcomes are being pursued through procurement and reported by organisations. This Bill doesn't result in any changes to the Future Generations Commissioner's role or powers, but it does mean that there will be, as we've discussed previously, additional oversight of the achievement of the well-being goals through procurement, which will be provided by the Social Partnership Council and also by the procurement sub-group as well."*¹⁷⁸

Guidance

182. Section 43 of the Bill provides that Welsh Ministers may issue guidance on the operation of Part 3 of the Bill, and the topics the guidance may cover.

183. We received some evidence calling for clarification of specific terms in the guidance. EHRC Wales and Audit Wales, for example, called for the guidance to clarify what is meant by "decisions of a strategic nature" and others such as Amnesty International and Professor Alan Felstead said that the guidance should define concepts such as global responsibility and fair work.¹⁷⁹

184. The WLC called for the procurement guidance and documentation to be produced bilingually as this would have benefits in terms of upskilling Welsh speakers and would "contribute to development of a more consistent, standardised procurement infrastructure that delivers improved public procurement practices".¹⁸⁰

¹⁷⁸ Record of Proceedings, [paragraph 190](#) – 3 October 2022

¹⁷⁹ Written evidence, [Professor Alan Felstead; Amnesty International](#)

¹⁸⁰ Written evidence, [Welsh Language Commissioner](#)

185. Digital Health and Care Wales called for the Welsh Government to produce “practical guidance to support contracting authorities in their decision making around social responsibility”.¹⁸¹

186. Community Housing Cymru called for RSLs to be included in any consultation on regulations and guidance developed.¹⁸²

187. In terms of arrangements for setting guidance, Audit Wales emphasised the role of “good guidance in the success or failure of the legislation.” They said it would:

“[...]probably be beneficial in terms of responsible law-making for the Welsh Government to publish draft guidance, together with independent assessments of its likely effectiveness, for consultation and the Senedd’s consideration. And it would be best if this were done before the Bill passes.”¹⁸³

188. The Explanatory Memorandum states that the issuing of guidance under the Act (if it becomes law) will provide an opportunity to consolidate, simplify and address areas of overlap in existing guidance.¹⁸⁴ The Deputy Minister described the guidance as “an ideal opportunity to include practical details as well, case studies, and examples of how to achieve well-being through procurement” and suggested that it could be regularly updated.¹⁸⁵ An official for the Welsh Government also confirmed that consultation and engagement on the development of guidance was underway.¹⁸⁶

The Committee’s view

Implementation of the Bill’s vision for procurement

Underpinning the procurement aspects of this Bill is a vision of procurement which values a much broader set of values than simply that of lowest cost. Clearly, the realisation of this vision will rely in no small measure on effective implementation at all stages of the procurement process. But there are challenges that could impede implementation including inconsistent contract management, cultural resistance, and a lack of capacity and resources, all of which will need to be addressed.

¹⁸¹ Written evidence, [DHCW](#)

¹⁸² Written evidence, [CHC](#)

¹⁸³ Written evidence, [Audit Wales](#)

¹⁸⁴ Page 28, [Draft Explanatory Memorandum](#)

¹⁸⁵ Record of proceedings, [paragraph 177](#) – 3 October 2022

¹⁸⁶ Record of proceedings, [paragraph 180](#) – 3 October 2022

Day-to-day it will be the responsibility of procurement practitioners working across the public sector to deliver the Bill but we heard that they are stretched and sometimes lack the expertise needed. It was suggested that these challenges could be addressed to an extent by the role that greater transparency and accountability will have in driving up standards of performance, and the Bill's provisions should help in that regard.

We would like to see a stronger lead from the Welsh Government on the issue of capacity, capability and collaboration. The Welsh Government must prioritise building up the capacity and capability of the public sector procurement workforce to implement the new procurement duties and should provide the training necessary to do this. It should also clarify the roles that collaboration between public bodies, the proposed Procurement Centre of Excellence, and the SPC's procurement sub-group can play in driving this agenda forward.

Recommendation 17. The Welsh Government must prioritise ensuring that the procurement workforce has the capacity and capability to implement the new procurement and contract management duties of the Bill and provide the training necessary to do so. This training should be in place before the coming into force of the legislation and the RIA updated to reflect the estimated costs.

Recommendation 18. The Welsh Government should take steps to ensure that public bodies are able to collaborate effectively to build capacity, capability, and expertise by setting out in its response to this report:

- a clarification of the roles and relationship between the Procurement Centre of Excellence and the SPC's procurement sub-group;
- how it intends to ensure that the Procurement Centre of Excellence and SPC's procurement sub-group will play a role in driving the collaboration agenda forward.

Working with industry

In addition to working with public bodies, there will be a role for the Welsh Government working with businesses and suppliers particularly in the construction industry. We note that some good practice already exists but that risks remain whereby socially responsible procurement obligations are pushed down the supply chain to subcontractors. It is not clear how the Bill will address these issues and some of the evidence suggested that the issue could only be tackled through cultural (rather than legal) change. We would therefore like to see the Welsh Government work with industry bodies and representatives involved in construction procurement to develop robust guidance on how socially responsible procurement obligations

and risk should be shared through the whole of the supply chain, to address cultural and behavioural issues.

Recommendation 19. The Welsh Government should work with industry bodies and representatives involved in construction procurement to develop robust guidance on how socially responsible procurement obligations and risk should be shared through the whole of the supply chain and also seek to address related cultural and behavioural issues.

Reporting and compliance

Overly onerous reporting requirements could impact on the same “stretched” resources responsible for implementing the Bill which could further impede delivery. The Bill creates a number of new reporting requirements. We are not convinced that these, taken together, strike the right balance between the need to increase transparency; keep the administrative burden placed on public bodies to a minimum and avoid duplication of reporting requirements from other duties. The Welsh Government should set out how it intends to address these concerns.

Recommendation 20. The Welsh Government should set out how it will ensure that reporting requirements in the Bill are streamlined to ensure an appropriate balance between the need to increase transparency; keep the administrative burden placed on public bodies to a minimum; and avoid duplication of reporting requirements from other duties.

Powers to investigate

While the Bill’s powers to investigate procurement activities are a necessary aspect of compliance, we share concerns that greater clarity is needed around both the criteria for exercising these powers and how they relate with existing powers given to the Auditor General, the Future Generations Commissioner and others. We further note the Deputy Future Generations Commissioner’s comments that the powers to investigate in this Bill not only risk duplication but are narrower in their potential scope.

Recommendation 21. The Welsh Government should set out how Welsh Government procurement investigations will interact with existing powers held by the Future Generations Commissioner, and how its approach as envisaged in the legislation will add value and avoid duplication.

Recommendation 22. The Welsh Government should set out the criteria that would trigger an investigation under section 41 of the Bill and its position on the need to consult the Auditor General for Wales before the commencement of such an investigation.

Recommendation 23. The Welsh Government should bring forward amendments at Stage 2 detailing the criteria that would trigger an investigation under section 41 on the face of the Bill.

Guidance

Previous experiences show that clear guidance can play a pivotal role in implementation and we have alluded to areas where we would welcome specific issues reflected in guidance throughout this report. Engagement with all interested parties, alongside opportunities to scrutinise and challenge the guidance in draft form will strengthen the quality of the guidance, and as a result, strengthen implementation of the Bill. We would therefore welcome assurances from the Welsh Government that the statutory guidance will be published in draft form, for consideration by stakeholders and the Senedd, for a minimum of six sitting weeks (excluding weeks when the Senedd is in Recess).

Recommendation 24. The Welsh Government should make a commitment to publish the statutory guidance in draft form for consideration by stakeholders and the Senedd with a minimum consultation period of six sitting weeks.

8. Financial implications and other considerations

Financial implications for public bodies

189. Denbighshire County Council and Natural Resources Wales (NRW) highlighted additional costs facing public bodies. Denbighshire County Council questioned whether any financial support will be available to public bodies to support the implementation of the legislation. NRW asked whether the SPC will be directing public bodies to implement new initiatives, and stated that if so they argued that public bodies would need additional funding allocations.¹⁸⁷

Regulatory Impact Assessment

190. Audit Wales raised a number of issues relating to the Bill's Regulatory Impact Assessment (RIA):

- The Welsh Government is currently consulting on whether to include an additional eight public bodies within the well-being duty of the Well-being of Future Generations Act 2015. If this goes ahead, these bodies will also be subject to the social partnership and socially responsible procurement duties in this Bill. Consequently, costs to public bodies will also increase.
- The additional public bodies subject to the Well-being of Future Generations Act are "reasonably likely" to generate additional costs for the Future Generations Commissioner's office.
- Costs included in the RIA do not include those that would be incurred by the four Corporate Joint Committees.¹⁸⁸

191. DFG Commissioner, Marie Brousseau-Navarro highlighted the experience of implementing the WFG Act and how costs are often underestimated:

"[...] based on our experience, we know that cultural change and the cost implications of it are sometimes underestimated and that that's very often the case. When I was looking at the regulatory impact assessment here, I saw things like it assumes initial familiarisation activities of three hours of an officer's time for one person in each of the 44 public bodies. So, I'm really hoping the Finance Committee will look into that a bit more. And, again, we

¹⁸⁷ Written evidence, [Denbighshire County Council](#), [Natural Resources Wales](#)

¹⁸⁸ Written evidence, [Audit Wales](#)

*know from experience that it is really important to spend time working with the people who are on the receiving end of new duties, so that they can understand how it works with the million things they already have to do, and make sure it's efficient and doesn't contradict any of the things they have to do in the new legislation as well as the other legislation."*¹⁸⁹

Facility time

192. Trade unions have raised issues around additional facility time required to fulfil obligations in relation to the social partnership duty. The Wales TUC and NEU Cymru both stated that "under no circumstances can unions be expected to use existing facility time to engage in this work (unless this is agreed at a local level)".¹⁹⁰ The Wales TUC also commented that the implementation of the duty will require additional resource for social partners to implement it. However, the level of resource is currently unknown as social partners have insufficient knowledge of what effective engagement would be required to make the duty work.¹⁹¹

193. Bethan Thomas of Unison argued that more facility time would be beneficial for employees and employers:

*"We will need to see an increase in facility time for us to fully engage and co-operate in terms of implementing the legislation. What I would say about that is that I think that you can't underestimate the value of that facility time in terms of it will be a short, initial burst of facility time and resource that will be needed, but the longer term benefits and impact of co-creation of ideas and solutions to challenges can't be underestimated.[...] The engagement of trade unions in these matters has been well recognised as being beneficial to workforces, to workplaces, to employers and culturally, and there's evidence in TUC papers that can seek to put a value on the positive engagement of trade unions with their employers."*¹⁹²

194. Tom Hoyles of GMB and Mary Williams of Unite the Union agreed that more facility time would be needed to deal with the additional workload created by the legislation.¹⁹³

195. The Deputy Minister said that at present the Welsh Government did not possess a "full picture" of trade union facility time across the public sector "largely because arrangements are

¹⁸⁹ Record of Proceedings, [paragraph 334](#) – 11 July 2022

¹⁹⁰ Written evidence, [Wales TUC](#), [NEU Cymru](#)

¹⁹¹ Written evidence, [Wales TUC](#)

¹⁹² Record of Proceedings, [paragraph 203](#) – 4 July 2022

¹⁹³ Record of Proceedings, [paragraphs 307 and 308](#) – 4 July 2022

made locally within each public body". An official confirmed work was currently underway to review this and "establish a baseline for what facility time currently exists across the public service in Wales". It was anticipated that this work would be completed by Christmas 2022 and the Deputy Minister agreed to keep us updated on outcomes.¹⁹⁴

Post-implementation evaluation

196. Evidence from the IWA and Audit Wales emphasised post-legislative scrutiny and the need for evaluation of the implementation of the Bill if it becomes law.¹⁹⁵

197. Both the Explanatory Memorandum and the Deputy Minister in her appearances before us outlined the intention to undertake post-implementation evaluation.¹⁹⁶ The Deputy Minister also emphasised the importance of transparency in this process stating that "most of the information and advice produced by the Social Partnership Council for Welsh Ministers will also be published".¹⁹⁷

The Committee's view

Financial implications and the RIA

We note the concerns relating to the financial implications and potential costs to public bodies arising as a consequence of the Bill. There is clearly a need to better reflect these in the Regulatory Impact Assessment, particularly if additional public bodies come under the scope of the legislation. We therefore expect the Welsh Government to liaise with public bodies in response to these concerns and bring forward a revised RIA at the end of Stage 2 to reflect any changes required.

Recommendation 25. The Welsh Government should liaise with public bodies in response to concerns that the RIA underestimates the potential costs arising as a consequence of the Bill and bring forward a revised RIA at the end of Stage 2 to reflect any changes required.

Facility time

The need for additional facility time as a result of the Bill has been raised by several trade union representatives during the development of this legislation. For us to effectively scrutinise the

¹⁹⁴ Record of proceedings, [paragraphs 53 to 58](#) – 3 October 2022

¹⁹⁵ Written evidence, [the IWA, Audit Wales](#)

¹⁹⁶ Explanatory Memorandum; Record of Proceedings, [paragraphs 55 and 56](#) – 20 June 2022

¹⁹⁷ Record of Proceedings, [paragraph 55](#) – 20 June 2022

proposals, and for public bodies and trade unions to understand the potential costs and benefits, the Welsh Government should provide more detail on this issue.

Recommendation 26. The Welsh Government should work with employers and the trade union movement to understand whether extra facility time will be needed for trade unions to fulfil their obligations relating to the Bill and provide this detail via an updated Regulatory Impact Assessment by the end of stage 2 to reflect the potential costs and benefits of this additional facility time.

Post-implementation evaluation

We welcome the commitment, at the outset of the legislative process, to post-implementation evaluation, should the Bill become law. We note the commitment of the Deputy Minister to transparency and would like to see this reflected more broadly, to aid the process of scrutiny and evaluation. Furthermore, we note that following the ending of the Shadow Social Partnership Council in July 2022, the Deputy Minister plans to establish a Social Partnership 'Forum' to prepare the ground for the arrangements envisaged in this Bill. We would welcome publication of the work of the Shadow Social Partnership Council in line with what is being proposed for the SPC and to inform the work of the Forum. This should include publication of agenda, minutes, and outputs for the Shadow Council and any evaluation or lesson learning exercise undertaken of its work.

Recommendation 27. The Welsh Government should publish the agenda, minutes and outputs for the Shadow Social Partnership Council. To enable transparency these documents should be published before the end of 2022.

Recommendation 28. The Welsh Government should publish any work undertaken to evaluate and learn the lessons of the work of the Shadow Social Partnership Council at the earliest opportunity and no later than July 2023.

Annex A: List of oral evidence sessions

The following witnesses provided oral evidence to the committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed on the [**Committee's website**](#).

Date	Name and Organisation
20 June 2022	<p>Hannah Blythyn, Deputy Minister for Social Partnership Welsh Government</p> <p>Neil Surman, Deputy Director - Social Partnership Welsh Government</p> <p>Sue Hurrell, Head of Fair Work Procurement Welsh Government</p> <p>Neil Buffin, Deputy Director - Legal Services Welsh Government</p>
27 June 2022	<p>Richard Tompkins NHS Employers</p> <p>Sue Hill Betsi Cadwaladr University Health Board</p> <p>Geraint Thomas, Temporary Assistant Chief Officer South Wales Fire and Rescue Service</p> <p>Helen Rees, Head of Procurement Mid and West Wales Fire & Rescue Service</p> <p>Shân Morris, Assistant Chief Officer North Wales Fire and Rescue Service</p>
4 July 2022	<p>Leighton Jenkins CBI Wales</p> <p>Ben Cottam Federation of Small Businesses Wales</p> <p>Paul Slevin Chambers Wales</p>

Date	Name and Organisation
	<p>Richard Selby Institute of Directors Wales</p> <p>Nisreen Mansour Trades Union Congress Wales</p> <p>Bethan Thomas UNISON</p> <p>Darren Williams Professional and Commercial Services Union</p> <p>Professor Phil Banfield British Medical Association</p> <p>Mary Williams Unite</p> <p>Kelly Andrews GMB</p> <p>Dr Victoria Winckler Bevan Foundation</p>
11 July 2022	<p>Ed Evans CECA Wales</p> <p>Liz Lucas Caerphilly Council</p> <p>Ruth Marks Wales Council for Voluntary Action</p> <p>Kirsty Cumming Community Leisure UK</p> <p>Professor Alan Felstead Cardiff University</p> <p>Professor Edmund Heery Cardiff University</p> <p>Professor Lydia Hayes University of Kent</p> <p>Karen Higgins Welsh Local Government Association</p> <p>Jon Rae Welsh Local Government Association</p>

Date	Name and Organisation
	Marie Brousseau-Navarro Future Generations Commissioner's Office
	Alice Horn Future Generations Commissioner's Office

Annex B: List of written evidence

The following people and organisations provided written evidence to the Committee. All Consultation responses and additional written information can be viewed on the **Committee's website**.

Reference	Organisation
SPPP Bill 01	Civil Engineering Contractors Association
SPPP Bill 02	Professor Alan Felstead, Cardiff University
SPPP Bill 03	Colleges Wales
SPPP Bill 04	Federation of Small Business Wales
SPPP Bill 05	Denbighshire County Council
SPPP Bill 06	Community Housing Cymru
SPPP Bill 07	Equality and Human Rights Commission Wales
SPPP Bill 08	Chartered Institute of Building
SPPP Bill 09	British Standards Institution
SPPP Bill 10	Wrexham Council
SPPP Bill 11	Amnesty International Wales
SPPP Bill 12	Size of Wales, Cytun, Welsh Centre for International Affairs, Fair Trade Wales, WWF Cymru
SPPP Bill 13	Wales Council for Voluntary Action
SPPP Bill 14	Chwarae Teg
SPPP Bill 15	Rail, Maritime and Transport Workers Union
SPPP Bill 16	Natural Resources Wales
SPPP Bill 17	Universities Wales
SPPP Bill 18	Royal Collage of Nursing Wales

Reference	Organisation
SPPP Bill 19	Cwmpas
SPPP Bill 20	Chambers Wales
SPPP Bill 21	National Education Union Cymru
SPPP Bill 22	TUC Wales
SPPP Bill 23	Institute of Welsh Affairs
SPPP Bill 24	Open Rights Group
SPPP Bill 25	Fair Trade Wales
SPPP Bill 26	Digital Health and Care Wales
SPPP Bill 27	Tomorrow's Company
SPPP Bill 28	Welsh Language Commissioner
SPPP Bill 29	Audit Wales
SPPP Bill 30	Digital Health and Care Wales (no. 2)
SPPP Bill 31	Welsh Local Government Association