

Social Partnership and Public Procurement (Wales) Bill

Bill Summary

November 2022



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Contents

1. Background to the Bill	1
1.1. Social partnership.....	1
1.2. Fair work.....	2
1.3. Socially responsible public procurement.....	2
2. What the Bill does	4
2.1. Summary of the Bill’s provisions	4
2.2. Objectives of the Bill	4
2.3. Changes made from the draft Bill	5
2.4. Detailed provisions within the Bill.....	7
3. Reaction to the Bill and key policy issues raised during scrutiny	14
3.1. Reaction to the Bill.....	14
3.2. Key policy issues raised in scrutiny.....	17
4. Financial implications of the Bill and key issues raised in scrutiny	21
4.1. Financial implications of the Bill.....	21
4.2. Financial issues raised in scrutiny	22

1. Background to the Bill

The Social Partnership and Public Procurement (Wales) Bill was introduced into the Senedd on 7 June 2022. The Equality and Social Justice, Finance and Legislation, Justice and Constitution Committees have scrutinised the Bill.

The Member in Charge of the Bill, Hannah Blythyn MS, introduced the Social Partnership and Public Procurement (Wales) Bill (the Bill) into the Senedd on 7 June 2022.

Developing statutory arrangements for social partnership through the Bill is a commitment in the current **Programme for Government**, and was included in the manifesto put forward by the First Minister when he stood in the Welsh Labour leadership election in 2018.

It was originally intended that the Bill would be introduced in the Fifth Senedd. However due to the impact of the COVID-19 pandemic, **the Welsh Government decided** to issue a draft Bill for consultation, for the incoming administration after the 2021 Senedd election to consider how to progress.

1.1. Social partnership

The International Labour Organisation **notes that** social partnership “Includes all types of negotiation, consultation or exchange of information between or among representatives of governments, employers and workers on issues of common interest relating to economic and social policy.” The **Explanatory Memorandum (EM) to the Bill** refers to social partnership as “a way of working which aims to achieve a mutually agreed outcome, to the benefit of all involved groups”.

Social partnership is a major and long-standing element of social, political and economic systems across the world, particularly in Europe. Individual countries have taken a range of approaches to implementing social partnership, which have been influenced by the context within that country. In some countries, such as **Austria** and **Sweden**, this has been done through informal rather than legislative arrangements. However, there are other examples such as where social partnership arrangements are underpinned by legislation, for example **Denmark** and **the Netherlands**.

Social partnership is a long-established approach in Wales. It has been used to respond to situations such as the 2008 financial crisis and the coronavirus pandemic, as well as ongoing issues in devolved public services through the **Workforce Partnership Council**. However, the Welsh Government considers that these structures are not sufficiently connected or co-ordinated to maximise impact, and believes this can be addressed through a statutory Social Partnership Council.

1.2. Fair work

The Welsh Government has **committed to** making Wales a fair work nation. It established a **Fair Work Commission** to consider how it could make progress towards this goal within the boundaries of the devolution settlement.

The Fair Work Commission **reported in 2019**, making 48 recommendations. One of these was that the Welsh Government should establish legislative arrangements to embed social partnership more securely, and that this should inform the development of social partnership legislation.

The Fair Work Commission also created a definition of fair work, under which:

...workers are fairly rewarded, heard and represented, secure and able to progress in a healthy, inclusive environment where rights are respected.

1.3. Socially responsible public procurement

The Welsh public sector **spends around £7 billion per year** on procuring goods and services, and the Minister for Finance and Local Government **has described procurement** as “one of the most important and powerful levers the Welsh Government can use to help achieve its programme for government aspiration of a more prosperous, more equal and greener Wales”. This Bill aims to deliver socially responsible public procurement. In the EM, the Welsh Government defines this as requiring those who undertake public procurement to “think about how they can also secure wider social, economic, environmental and cultural benefits” and making well-being a key consideration.

The Welsh Government has a number of existing policies aimed at covering socially responsible public procurement:

- The **Community Benefits toolkit** was published in 2010, and has been the Welsh Government’s “key mechanism for creating jobs and training through procurement”. This is a way of incorporating social requirements into procurement in order to benefit the communities in the areas in which contracts are delivered.

- The Welsh Government has produced a number of **Wales Procurement Policy Notes** covering fair work.
- The Welsh Government published the voluntary **Code of Practice on Ethical Employment in Supply Chains** in 2017, and updated it in 2021. This includes 12 commitments on areas such as training staff, considering paying staff the ‘Real’ Living Wage, and ensuring unlawful employment practices are not found within supply chains.
- Strengthening the foundational economy is a priority for the Welsh Government, and the EM says “there is a growing commitment to use public sector spending to support home grown businesses and Welsh supply chains”.

While the Welsh Government considers it has made good progress using this approach, the Bill’s EM also states that “there have been a number of reviews highlighting improvements that could be made”. Therefore, it says it has opted to use legislation to try to make greater progress.

Procurement legislation from elsewhere in the UK is relevant to this Bill. The Bill interacts with the UK Government’s **Procurement Bill**, which was introduced into the House of Lords on 11 May 2022. In **August 2021** the Minister for Finance and Local Government said that the Welsh Government would use the UK Government legislation to “reform the basic processes underpinning procurement”. She also highlighted that the Welsh Government had received written guarantees from the UK Government that taking this approach would not impact on its ability to introduce the Social Partnership and Public Procurement Bill.

The UK Government’s Bill is currently going through the **legislative consent process in the Senedd**. The Welsh Government has a number of outstanding issues it would like to see resolved before it recommends consent.

The Welsh Government’s approach to this part of the Bill has been influenced by the **Procurement Reform (Scotland) Act 2014**, and has a number of similar elements to this legislation. These include a sustainable procurement duty, requirements for public authorities to produce procurement strategies, and annual reporting requirements.

2. What the Bill does

The Bill aims to develop a framework to improve people's well-being by improving public services through social partnership working, promoting fair work and socially responsible public procurement.

2.1. Summary of the Bill's provisions

Page 7 of the **Explanatory Memorandum** (EM) to the Bill states that it makes provision for:

- the establishment of a Social Partnership Council;
- a statutory social partnership duty to be placed on certain public bodies requiring them 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;
- certain public bodies to carry out contract management duties to ensure that socially responsible outcomes are pursued through supply chains; and
- reporting duties to be imposed on the public bodies and Welsh Ministers in relation to the social partnership duty and procurement duty.

2.2. Objectives of the Bill

The EM sets out the Welsh Government's aims for the different parts of the Bill.

Pages 17-18 of the EM set out the Welsh Government's **ambitions for the Social Partnership Council**. The Welsh Government intends that "the SPC will provide

for the greater involvement and participation of workers and employers in the approach to policy-making to drive a more ambitious agenda and support more robust decision-making, to deliver improved outcomes for the people of Wales.”

Page 22 of the EM outlines **the aims of the social partnership duty**. This part of the Bill is intended to “promote cooperation, strengthen policy and improve outcomes, through dialogue between social partners, achieved in social partnership”.

Page 24 of the EM sets out that the **fair work provision** is intended to “secure fair work as part of the description of the “A prosperous Wales” well-being goal, to be pursued by public bodies and Welsh Ministers when carrying out sustainable development under the WFG Act 2015.”

Page 27 of the EM details the aims of the parts of the Bill which cover **socially responsible public procurement**. These are to:

- require organisations to demonstrate their commitment to the Welsh Government’s procurement policy agenda, in order to support economic growth, greater equality, resilient supply-chains and the long term sustainability of public services;
- provide clarity around the large number of policy expectations placed on procurement activity;
- ensure that socially responsible outcomes linked to WFG Act 2015 goals, are at the heart of procurement strategies and processes;
- improve the link between procurement processes and the delivery of outcomes through contract management;
- improve transparency by recording metrics and publishing regular reports sharing good practice and areas where improvements are needed; and
- hold organisations for to account for ensuring that contract conditions are maintained throughout supply chains, particularly in large construction contracts.

2.3. Changes made from the draft Bill

The Welsh Government **published** a draft Bill and consultation document in February 2021, and published a **summary of responses** in July 2021.

The Bill introduced into the Senedd makes a number of changes to the draft Bill published in 2021:

Social Partnership Council (SPC)

- The draft Bill has been amended so that the SPC will have an additional function to provide information and advice to Ministers on public bodies pursuing the “A prosperous Wales” well-being goal in the WFG Act 2015.
- The Bill introduced into the Senedd requires that worker representatives appointed by the First Minister must be nominated by the Wales TUC, which was not the case for the draft Bill; and
- The requirement in the draft Bill for Welsh Ministers to publish all information and advice received from the SPC has been removed. The Welsh Government states that Ministers may choose to publish information or advice in the majority of cases, but there may be occasions where it would not be appropriate to publish information received from the SPC.

Social partnership duty

- The wording of the social partnership duty has been amended so that it requires public bodies within the scope of the Bill to seek consensus or compromise with their recognised trade unions (or where appropriate) other members of its staff, when setting and delivering their well-being objectives under the WFG Act 2015; and
- A separate duty for Welsh Ministers has been developed within this part of the Bill “following internal consultation with officials in other policy areas”.

Fair work

- The section of the draft Bill on fair work does not appear in the Bill as introduced. The draft Bill would have created a Fair Work Goal. It would also have 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;
- This has been replaced with section 20 of the Bill, which amends the “A Prosperous Wales” goal in the WFG Act 2015 to replace “decent work” with “fair work”. The approach taken places fair work within the Welsh Government’s wider approach to well-being goals.

Socially responsible public procurement

- The overarching socially responsible public procurement duty now makes reference only to national Well-being Goals, and not an additional Fair Work Goal, which has not been included in the Bill as introduced.

- Bodies subject to the Socially Responsible Public Procurement Duties do not include HE and FE institutions or Registered Social Landlords. The lists of bodies included in the Social Public Workforce Clause duties is now the same as the bodies included in the other socially responsible public procurement duties;
- There is a revised exception reporting process which will require Ministers to publish the outcome of their considerations in the event of a contracting authority providing them with a notification that they do not intend to include social public works or public workforce clauses within a procurement contract; and
- The £2 million threshold for defining construction-related “prescribed procurements” has been revised to be inclusive of VAT.

2.4. Detailed provisions within the Bill

Part 1 - The Social Partnership Council

Sections 1 to 6: Establishment and purpose

Section 1 establishes the Social Partnership Council for Wales (the SPC”) and describes its core function together with the purposes for which it may exercise that function.

According to page 111 of the EM, the SPC’s 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.”

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.

Sections 3 and 4 make provision about who can be appointed by the First Minister as employer and worker representatives.

Section 5 covers nominations of appointed members. There is a divergence in the approach to the nomination/appointment procedure – with employer

representatives the First Minister is not obliged to appoint a person who has been nominated, whereas with worker representatives the First Minister may only appoint a worker representative who has been nominated by Wales TUC Cymru.

Section 6 provides that employer or worker representatives are appointed for three years unless either the First Minister terminates their appointment or they resign by notifying the First Minister.

Sections 7 to 13: Operation and administration

Sections 7 to 12 make provisions regarding the operation and administration of the SPC. They specify certain procedures relating to the operation of the SPC, which includes the requirement that it meets at least 3 times in each 12 month period and that the SPC must be chaired, where possible, by the First Minister. Other procedures, such as the quorum for SPC meetings, must be specified by the Welsh Ministers.

Section 13 provides the SPC with supplementary powers in relation to improving the effectiveness of its functions or the functions of a subgroup.

Section 14: Interpretation

Section 14 sets out how a number of terms used in part 1 of the Bill should be interpreted.

Part 2 - Social Partnership And Sustainable Development

Sections 15 to 20 : Overview of Part 2 and interpretation

Section 15 summarises the following links between Part 2 of the Bill and the WFG Act 2015:

- a. How the social partnership duties are linked to the well-being duty in section 3 of WFG Act 2015;
- b. How the Bill amends the “A prosperous Wales” well-being goal in section 4 of WFG Act 2015; and
- c. How the terms “sustainable development” and “public body” used in Part 2 of the Bill have the same meaning as in WFG Act 2015.

Section 16 places a ‘social partnership duty’ on each specified public body to, in so far as is reasonable, ‘seek consensus or compromise’ primarily with its recognised

trade unions when taking certain actions. Where a public body does not have a recognised trade union, they must ‘seek consensus or compromise’ with other representatives of its staff.

Section 17 requires the Welsh Ministers, when making decisions of a strategic nature about the reasonable steps they are taking to meet the well-being objectives (set under section 3(2)(a) of the WFG Act 2015), to consult with the SPC. It does not apply to day-to-day decisions taken by the Welsh Ministers.

Section 18 requires each public body to produce annual reports setting out what it has done to comply with the social partnership duty imposed by section 16. If the report is not agreed with the public body’s recognised trade union or (where there is no recognised trade union) other representative members of staff it must contain a statement setting out the reasons for the disagreement.

Section 19 requires the Welsh Ministers to prepare and publish an annual report setting out what they have done to comply with the social partnership duty imposed by section 17. If the report is not agreed with the SPC, it must contain a statement setting out the reasons for the disagreement.

Section 20 amends the description of the “a prosperous Wales” well-being goal in section 4 of the WFG Act 2015, substituting “fair work” for “decent work”. This amendment results in a requirement that public bodies consider fair work when setting and taking action to meet objectives designed to maximise their contribution to achieving the “A prosperous Wales” well-being goal.

Part 3 - Socially Responsible Public Procurement

Sections 21 to 23: Key concepts

Part 3 of the Bill makes provisions in relation to socially responsible procurement. Sections 21 to 23 sets out key concepts and definitions.

Sections 24 to 26: The socially responsible procurement duty

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.

The section introduces a category of public procurement in respect of “prescribed

contracts”, which fall into three categories:

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

Section 25 introduces the particular actions that a contracting authority must take in relation to a “major construction contract”, specifically that it must have regard to “social public works clauses” (which will be published by the Welsh Ministers in accordance with section 27), and consider whether such clauses should be included in the particular contract that is being awarded. If it is decided that a contract should include social public works clauses, the contracting authority must take all reasonable steps to ensure that such clauses can be (and are) implemented.

Section 26 sets out the particular actions that a contracting authority must take in relation to an “outsourcing services contract”. Specifically that it must consider including “social public workforce clauses” (which will be published by the Welsh Ministers as part of the wider public services outsourcing and workforce code) in any relevant outsourcing services contract it proposes to award. If it is decided that a contract should include social public workforce clauses, the contracting authority must take all reasonable steps to ensure that such clauses can be (and are) implemented.

Sections 27 to 31: Social public works clauses

Section 27 requires the Welsh Ministers to publish model clauses for major construction contracts (“social public works clauses”) designed to bring about improvements to economic, social, environmental and cultural well-being. These clauses will relate to each of the improvements listed under the categories set out in the Table in section 27.

Section 28 provides that in relation to a major construction contract, in addition to the steps required to be taken pursuant to section 25, contracting authorities are also required to take all reasonable steps to ensure that obligations are implemented where a contractor enters into a subcontract.

Section 29 requires a contracting authority to notify the Welsh Ministers if, in relation to a major construction contract it has not included the social public works clauses in the contract (even if it has taken reasonable steps to try and include them).

Section 30 sets out what the steps required to be taken by the Welsh Ministers once they have received a notification from a contracting authority in the circumstances set out in section 29.

Section 31 provides that the Welsh Ministers must publish a statement if, in relation to a major construction contract to which they are a party:

- i. they have not included the social public works clauses in the contract (even if they have taken reasonable steps to try and include them),
- ii. they have not put a process in place to manage the implementation of the obligations set out in the social public works clauses, or
- iii. they have failed to pass the required obligation through supply chains via sub-contracts.

Sections 32 to 37: Social public workforce clauses and code of practice on outsourcing public services

Section 32 requires the Welsh Ministers to publish a code of practice (the “public services outsourcing and workforce code”) about employment and pensions matters related to outsourcing services contracts. The “social public workforce clauses” will be included as part of that code.

Section 33 provides that the code published under section 32 must include model contract clauses, designed to ensure that members of staff employed to deliver a service can, if they wish, be transferred to the new employer that will be contracted to deliver the service. These model contract clauses will include provisions that seek to protect their terms and conditions of employment and pensions.

Section 34 requires contracting authorities to take all reasonable steps to ensure that the obligations in the social public workforce clauses are implemented where the contractor enters into a subcontract with any other economic operator.

Section 35 requires a contracting authority to notify the Welsh Ministers if it has not included, or does not intend to include, social public workforce clauses in the contract or there is no process in place for ensuring that obligations in social public workforce clauses are implemented where the contract is subcontracted.

Section 36 provides that when the Welsh Ministers a notification, they must consider whether they are satisfied with the reasons given. If they are not satisfied, they may direct the contracting authority to take all reasonable steps in order to address the situation.

Section 37 relates to contracts that are let out by the Welsh Ministers. For such contracts, a statement must be published as soon as reasonably practicable by the Welsh Ministers if they do not intend to include social public workforce clauses in an outsourcing services contract.

Section 38: Procurement strategies

Section 38 requires contracting authorities to prepare and publish a “procurement strategy” setting out how the authority intends to carry out public procurement in a socially responsible way, and how it intends to meet its socially responsible procurement objectives when it carries out public procurement.

Sections 39 to 42: Reporting and accountability

Section 39 places a requirement on contracting authorities that have awarded any prescribed contracts during a financial year to publish an annual socially responsible procurement report as soon as possible at the end of each financial year.

Section 40 requires each contracting authority to maintain and publish a contracts register containing certain information (specified in the section) on ‘registrable contracts’ which are of a description prescribed by the Welsh Ministers in regulations.

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.

Section 42 requires the Welsh Ministers to publish, as soon as reasonably practicable after the end of a financial year, a report about public procurement in Wales. The report must summarise the annual procurement reports published under section 39 and any investigations carried out under section 41. The reports must be published and laid before the Senedd.

Section 43 to 45: General

Section 43 provides that the Welsh Ministers may issue guidance on the operation of Part 3 of the Bill, and sets out certain topics which the guidance may make provision about.

Section 44 specifies the applicable Senedd procedure for regulations made under the Bill. Regulations made under section 22(4), 24(8)(c) or 25(3) will be subject to the

“draft affirmative” procedure, whereas regulations made under any other section of the Bill will be subject to the “negative” procedure.

Part 4 - Final Provisions

Sections 46 to 49

Part 4 of the Bill contains a minor amendment to the WFG Act 2015, provides that the Bill comes into force on a day appointed by the Welsh Ministers and sets out the short title of the Bill.

Schedules 1 and 2

Schedule 1 lists the bodies, office-holders and other persons that are defined as “contracting authorities” for the purposes of the Bill.

Schedule 2 makes provision about revising and reviewing “socially responsible procurement objectives”.

3. Reaction to the Bill and key policy issues raised during scrutiny

Much of the evidence received in stage 1 scrutiny was supportive of the Bill, although a number of improvements were suggested. This section discusses the key issues raised in evidence to the Equality and Social Justice (ESJ) Committee.

3.1. Reaction to the Bill

Trade unions

The Wales Trades Union Congress (TUC) **welcomed the introduction of the Bill**, calling it a landmark step. Shavanah Taj from the Wales TUC stated that:

The Bill lays the foundations for workers to be at the table when key decisions are being taken about the communities they live and work in. It's a major step and we look forward to working with Welsh Government to make this a reality across Wales.

Individual unions affiliated to the TUC also expressed support for the Bill. The Public and Commercial Services (PCS) union **stated that** this approach has benefits, as public services will gain from being able to draw upon the expertise of those delivering them. The GMB **said that** a Wales-wide effort is needed to tackle low pay and insecure work, and that the statutory social partnership approach of the Bill means there is a consistent platform to discuss these issues.

Trade unions not affiliated to the TUC supported the social partnership elements of the Bill, although with some concerns which will be discussed later on in this paper. Professor Philip Banfield from the British Medical Association (BMA) Cymru **said that**:

“Superficially, there is a question as to whether this has to be enshrined in legislation, but, unfortunately, where we see things not enshrined in legislation, they rarely get done”.

The Royal College of Nursing (RCN) Wales **welcomed the proposals** to establish the Social Partnership Council, although like the BMA it has concerns around the role of non-affiliated trade unions in the membership.

Not everyone in the trade union movement has responded favourably to the Bill.

The trade union activist Morgan Rhys Powell **asserts that** the terms of engagement in social partnership are set by employers, and that this approach leads to compromise rather than delivering better outcomes for workers. The Wales TUC has **responded to these points**.

Public sector organisations

Public sector organisations who provided evidence to the ESJ Committee were mainly supportive of the Bill. The Welsh Local Government Association (WLGA) **said that** the Bill will bring consistency across organisations, and will help to spread existing good practice across public bodies. The Deputy Future Generations Commissioner **noted that** public bodies are mainly focussing on employment and economic growth rather than fair work when they develop well-being objectives, and therefore social partnership and fair work need to be placed on a legislative footing within the boundaries of the devolution settlement. NHS Wales Employers **said that** placing social partnership on a statutory footing would act as a catalyst for moving workplace issues forward in a co-ordinated way that wouldn't happen without legislation.

However, Wrexham County Borough Council **felt that** the social partnership duty within the Bill would have potential negative implications, would elevate the views of trade unions above others, and would be difficult for local authorities to meet in some circumstances.

Business representative organisations

Business representative organisations had mixed views on the Bill. The Confederation of British Industry (CBI) Wales **said that** it will “solidify what’s here already”, and that social partnership can deliver positive outcomes such as the **Health and Safety Forum** established during the pandemic.

However, other business organisations tended to prefer the procurement elements of the Bill to those on social partnership, although they recognised the value of the social partnership arrangements in place during the pandemic. The Institute of Directors (IoD) Wales **said that** its members were supportive of the procurement aspects of the Bill, but wondered why procurement and social partnership had been included in the same Bill. The Federation of Small Businesses (FSB) Wales **questioned** whether legislation is needed and said that social partnership isn't particularly well understood by its members. It doesn't think that a statutory approach to social partnership is “a problem”, but questions whether a formal structure will allow for sufficient flexibility to address issues that arise.

Third sector organisations

The third sector organisations who gave evidence to the ESJ Committee expressed mixed views on the Bill. The Bevan Foundation **welcomed** “the principle of putting social partnership in statute”, but considers that the Bill’s focus on processes needs to be accompanied by wider non-legislative measures to improve workplace terms and conditions. The Wales Council for Voluntary Action (WCVA) **said** it is positive about this Bill, and welcomes the goal of working in partnership, but has concerns about different aspects of the Bill.

Procurement specialists

Ed Evans from the Civil Engineering Contractors Association (CECA) Wales **welcomed** the procurement aspects of the Bill, saying that there have been a number of deficiencies in public procurement particularly around contract management. He considers that the Bill will develop accountability and responsibility mechanisms to ensure that greater social value is delivered through procurement.

Liz Lucas from Caerphilly County Borough Council **questioned** the need for a Bill, saying that many of its goals can be undertaken under current legislation. However, she also said that the Bill is “fit for purpose”, as it has the potential to change procurement culture, moving away from lowest cost to outcome-driven procurement.

Academics

Professor Alan Felstead **stated that** 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.”

Emeritus Professor Ed Heery **said to the ESJ Committee that** there is evidence that supports legislating on social partnership and fair work. He cited research on social partnership arrangements in the Welsh and Scottish NHS, which found that these arrangements influenced the strategic direction of the NHS in these countries, having a clear impact.

Professor Lydia Hayes **suggested that** statutory status would bring rigour to social partnership arrangements and that legislation will help to further the duties in the Well-being of Future Generations Act 2015.

3.2. Key policy issues raised in scrutiny

Overall approach to the Bill

A majority of Members on the ESJ Committee recommended that the Senedd supports the general principles of the Bill, noting that much of the evidence it received was supportive of the Bill.

However, the Welsh Government acknowledged the challenges around quantifying and measuring the Bill's objectives, and this was something the Committee also heard evidence on. The Institute of Welsh Affairs **stated that** there should be additional focus on performance against objectives such as pay, working conditions and public services, noting 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.

CBI Wales **called for** a narrative to be developed to set out the case for the principles and outcomes intended from the Bill.

The ESJ Committee concluded that there is a possibility that the Bill's aims will not be met without Welsh Government action to communicate a clearer narrative on the case for the need for legislation, and greater detail on the tangible outcomes it wants to achieve through the Bill.

Social Partnership Council

Role of the Social Partnership Council

There was recognition from a number of organisations of the role that social partnership played during the pandemic. **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". However, they also **stated in oral evidence** that "as the pandemic has ebbed away, that hasn't manifested itself".

TUC-affiliated trade unions welcomed the development of a statutory Social Partnership Council (SPC), with the National Union of Rail, Maritime and Transport Workers **stating that** the approach being taken could provide a base for the creation of other forums involving private sector employers and unions. The National Education Union Cymru **described the SPC** as "a sensible means by which to ensure that the Welsh Government can engage with the workforce".

The ESJ Committee has said it wants to see a clear focus for the SPC, and recommended that it should work with social partners to develop focussed terms of reference.

Nominations process for the Social Partnership Council

The ESJ Committee also heard different views around the nominations process for worker representatives on the SPC. The **Royal College of Nursing (RCN) Wales** and **BMA Cymru** are concerned that they may not be included on the SPC under the current arrangements. RCN Wales called for the Bill to be amended 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 Wales TUC provided **written evidence** proposing to establish a ‘union side’ with non-affiliated unions that democratically determines worker representative nominations to the Council, and to develop protocols for how worker representatives engage with the wider trade union movement.

The Committee recommended that the Welsh Government amend the Bill to require the Wales TUC to nominate a certain proportion of non-affiliated union members to the Social Partnership Council as part of the nomination process.

Diversity of the Social Partnership Council

The **Equality and Human Rights Commission (EHRC) Wales** stated that it would like the Welsh Government to provide clarity on how it will ensure the Council has diverse membership. **Chwarae Teg** called for the Bill to be amended so that it requires a gender balance and diverse Council, and for the Welsh Government to place a requirement on Council representatives to demonstrate how they are committed to taking action on gender equality. The Deputy Minister for Social Partnership outlined that the intention is for work on the diversity of the SPC to be undertaken with social partners through the SPC’s procedures rather than through the Bill itself.

The ESJ Committee has recommended that the Welsh Government holds early discussions with social partners to ensure that the processes for making appointments to the SPC include “ambitious requirements for diversity of representation”.

Social partnership duty

Dispute resolution

Where there are concerns that a public body may not be meeting its obligations under the social partnership duty, the Welsh Government says that SPC members will be able to bring issues before it so the SPC can provide advice. Trade unions **supported a mediation-focussed approach** to addressing issues, with the GMB union stating that “Yes, I think 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”. The ESJ Committee recommended that the Welsh Government provide clarity on its preferred approach to dispute resolution, and set out why it has not included a formal mediation mechanism within the Bill.

Fair work

Professor Felstead and **Chwarae Teg** both raised concerns about the **differences between how fair work is included in the draft Bill compared to the Bill introduced to the Senedd. Sections 4-6 of the draft Bill**, covering fair work, were not included in the Bill introduced into the Senedd. The Deputy Minister **said that** “the Bill as presented respects and reflects the limits of the current devolution settlement”, and that the revised approach “better reflects our belief that promoting fair work can support the link between individual and collective well-being”.

The Deputy Future Generations Commissioner, Marie Brousseau-Navarro, **told the ESJ Committee** 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.

In oral evidence, 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, as did the Wales TUC in their **written evidence**. The Wales TUC said that this would ensure that the measures in the Bill are prioritised sufficiently.

The ESJ Committee has recommended that the Welsh Government develops guidance to help public bodies incorporate fair work into their well-being objectives, and outline how it expects this to lead to more public bodies doing this.

It also called on the Welsh Government to review whether the Future Generations Commissioner's Office has sufficient funding to give fair work the priority it needs.

Socially responsible public procurement

Procurement targets

Business groups are keen to see procurement targets introduced to maximise the potential benefits of this part of the Bill. IoD Wales **stated that** the key impact of procurement legislation will be increasing the percentage of procurement spent with Welsh businesses. **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.

The ESJ Committee has recommended that the Bill be amended, so that Welsh Ministers are required to set targets for the proportion of procurement spent in Wales and spent with specific types of suppliers such as SMEs or social enterprises.

Implementing this part of the Bill

A number of public bodies described the challenges they would face in implementing the procurement aspects of the Bill. The North Wales Fire and Rescue Service **described** procurement managers as being "like hen's teeth", with recruitment challenges potentially leading to inconsistency across public bodies such as fire and rescue services. The WLGA set out their assessment of these challenges:

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.

Procurement experts from CECA Wales and Caerphilly County Borough Council **highlighted** the different levels of performance and expertise across different public bodies, and raised the need for additional Welsh Government support to help address this.

The ESJ Committee has recommended that the Welsh Government prioritises ensuring that the procurement workforce has the capacity and capability to implement the new procurement and contract management duties of the Bill. It also recommended that the government support public bodies to collaborate effectively to build capacity, capability and expertise.

4. Financial implications of the Bill and key issues raised in scrutiny

The Bill will have estimated additional costs of around £30 million over a five-year period, which will be incurred by the Welsh Government, public bodies subject to the Bill, and the private sector.

4.1. Financial implications of the Bill

The Regulatory Impact Assessment (RIA) included in the EM to the Bill summarises its costs and benefits over a five-year period. There will be costs from the Bill for the Welsh Government, public sector organisations, and the private sector.

The estimated **costs to the Welsh Government** include transitional costs of £242,000 for developing statutory guidance and developing a digital presence for the Social Partnership Council. It also includes recurrent costs of just over £2.9 million for staffing, producing reports, and administering the duties within the Bill.

The Welsh Government's estimated **costs to the public sector** include transitional costs of £131,000 for staff to make themselves aware of the Bill's requirements, and attending training. The majority of the £20.7 million recurrent costs relate to the construction contract management duty, with other costs resulting from attending social partnership meetings, and meeting requirements to develop and report on procurement.

Welsh Government estimates that **the private sector** will incur recurrent costs of just under £6.5 million over this period, relating to the construction contract management duty.

The RIA also mentions the Welsh Government's assessment of benefits arising from the legislation such as those from more ethical employment practices in supply chains, better outcomes from working in social partnership, and from the Social Partnership Council providing Wales-wide leadership to create stronger and more consistent social partnership working. It does not include any figures as the Welsh Government considers these impossible to quantify.

Table 1: Costs and benefits of the Social Partnership and Public Procurement (Wales) Bill from 2023-24 to 2027-28

Cost description	Cost (£000s)
Welsh Government	
Transitional costs	242
Recurrent costs	2,910
Total costs	3,152
Public sector	
Transitional costs	131
Recurrent costs	20,651
Total costs	20,782
Private sector	
Recurrent costs	6,466
Total Bill costs	30,399

Source: [Regulatory Impact Assessment](#), Social Partnership and Public Procurement (Wales) Bill, June 2022

4.2. Financial issues raised in scrutiny

Construction contract management costs

The [RIA notes](#) “an increase in socially responsible public procurement would require better resourced and more robust contract management”. Consequently, **a major cost to the public and private sectors arising from the Bill is through the strengthening of contract management in construction.**

Welsh Government has made assumptions about the split between both sectors **stating:**

Given that the procurement duties will be placed on the public sector, we are assuming that 75% of the construction management figure would fall to the public sector in increased contract management resource, and 25% to the private sector. This equates to annual costs of £3,879,825 for the public sector and £1,293,275 for the private sector.

In terms of the costs to private sector businesses, in **evidence to the Finance Committee** the Deputy Minister said that a key consideration for the Welsh Government will be taking a proportionate approach to the duties so that they can be applied appropriately through the supply chain.

The Deputy Minister also **stated that** many of the public bodies covered by the Bill will already be doing many of the actions associated with the Bill, so at this stage there won't be any need for additional financial support.

Costs to public sector organisations

A number of witnesses told the ESJ Committee of their **concerns that the RIA underestimates the financial impact of the Bill on public sector organisations**. The Welsh Local Government Association **considers that** there are a lot of Welsh Government costs included in the RIA, but not costs for other organisations. The Deputy Future Generations Commissioner **commented that**, contrary to what the RIA says, the Bill will affect the work of the Commissioner's office and will have financial implications for them.

Costs and benefits of additional facility time for trade unions

The ESJ Committee heard from trade unions that **they, and other social partners, will require additional resource to meet their obligations under the social partnership duty**. The potential costs and benefits of this are not reflected within the RIA. The Wales TUC's **written evidence** states that:

Implementation will require resource so that all social partners – including trades unions - are able to realise this duty. However, it is not yet clear what those resources would look like as there is a significant knowledge gap about what it would look like to effectively engage across the new structures. We have existing trade union education structures and those structures will have to be mobilised to support implementation, but much of the detail around how the application of the duty will work within workplaces needs to be determined by social partners at a local level.

The Deputy Minister **told the ESJ Committee** that the Welsh Government is starting to look at this area, to scope whether additional facility time will be needed, and whether there will be any financial implications from this.

Potential for additional costs resulting from more bodies being subject to the social partnership duty

The Welsh Government recently held a consultation 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 duty in this Bill, and the socially responsible public procurement duty if they were not already.

In evidence to the ESJ Committee, the Deputy Minister said that she anticipates that overall costs to public bodies will increase if more bodies are subject to the social partnership duty, and that the RIA would be updated accordingly.