

WLGA CONSULTATION RESPONSE TO THE SOCIAL PARTNERSHIP AND PUBLIC PROCUREMENT (WALES) BILL**Purpose**

- 1 To approve the WLGA response to the Social Partnership & Public Procurement (Wales) Bill. The consultation is on the draft legislation which seeks to strengthen and promote consistency in the Welsh system of social partnership, to deliver fair work outcomes, and to ensure socially responsible public procurement.

Background

- 2 This Welsh Government consultation is shorter than usual and seeks views on the draft Social Partnership and Public Procurement (Wales) Bill and wider policy concerning the subject areas of the draft Bill. The consultation document has been published together with the draft Bill itself and its Regulatory Impact Assessment.
- 3 The Bill has been developed alongside specialists from the Welsh trade union movement, the Welsh business community, and public sector organisations in Wales including the WLGA. It is intended to deliver three broad objectives.
- 4 Firstly, to strengthen and promote consistency in the Welsh system of social partnership. The draft Bill establishes a social partnership duty on public bodies to consult with their recognised trade union(s) when exercising certain functions concerning their well-being objectives. The draft Bill further sets out provisions to establish a statutory Social Partnership Council, chaired by the First Minister. The Social Partnership Council is intended to provide leadership for the social partnership system, and to connect social partnership arrangements at the local, sectoral, regional and national levels in Wales.
- 5 Secondly, to maximise Welsh Ministers' contribution to delivering fair work through the fair work goal and outcomes. The draft Bill places a duty on Welsh Ministers to set fair work objectives in consultation with the Social Partnership Council; to take actions to meet those objectives; and to report annually on what has been done and how much progress has been made in reaching those objectives. This process of setting objectives, taking actions and reporting on progress is intended to maximise Welsh Ministers' contribution to the goal of fair work as part of a wider vision to make Wales a 'fair work nation'.
- 6 Thirdly and finally, to achieve socially responsible procurement. The draft Bill sets out duties on specified public bodies to ensure that, when procurement is undertaken, there is consideration of social, economic, cultural and environmental

well-being and fair work. There are further duties set out concerning contract management and transparency. The measures outlined in the draft Bill seek to leverage the power of the public purse to deliver outcomes beneficial to society.

- 7 The consultation poses a number of direct questions concerning the measures set out in the draft Bill, wider policy questions, and the content of the Regulatory Impact Assessment. There have been a number of consultation events which officers have attended and the draft WLGA response has been circulated to Treasurers, Heads of Employment and Heads of Procurement.
- 8 The WLGA response is set out in the Annex. There are a couple of gaps where we are waiting for additional information. By and large, local authorities are already compliant with many of the proposed provisions but there are concerns around the definitions of fair work, central interference in contract management and the inconsistencies between the Bill and the accompanying narrative.

Recommendations

- 9 **Members are asked:**

9.1 To note the report and consider whether any additions or amendments are required to the WLGA submission.

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ANNEX

DRAFT. Consultation Response Form

Your name: Richard Dooner/Jon Rae

Organisation (if applicable): Welsh Local Government Association (WLGA)

Is this a collective response on behalf of your organisation / group of organisations (please specify): Yes

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Question	Response
	<p>Why the Bill is required</p> <p>Question 1: Do you agree with the reasons set out regarding the need for the Bill? Do you have any comments concerning the case for change?</p> <p>The WLGA has a proven track record of supporting local authority employers to work in partnership with the trade unions; local authority Provincial Councils (the forerunners of the Joint Council for Wales) came into existence over 45 years ago. The WLGA is fully committed to social partnership and has been a champion - in this respect - for the last couple of decades. It is acknowledged that legislation might be helpful - and in some cases necessary - to accelerate the case for change in relation to some aspects of social partnership and Fair Work across all industry sectors in Wales.</p> <p>In terms of procurement, the case for change refers directly to the early findings of the Wellbeing of Future Generations Commissioner's research. This research has now been concluded and published. The case for change should now refer to the published findings, which are insightful and different to the earlier reports.</p>
	<p>Additional comments:</p>

The legislation proposed in the Draft Bill will need to interoperate with existing legislation, including the Social Services and Wellbeing Act and the Wellbeing of Future Generations Act.

We believe that there is much common ground in this area. The objective of 'A More Equal Wales' includes for example a requirement to "Deliver decent work with fair and equal pay conditions."

The case for change should be made with due consideration of the changes underway to support the Wellbeing of Future Generations Act and the change be supportive of the collective effort. The Commissioners Section 20 review of procurement is particularly relevant in this context. The Report '[Procuring well-being in Wales](#)' has now been published. This is realistic about the state of procurement resourcing in Wales and the need for reform if ambitious policies such as the Wellbeing of Future Generations Act are to be resourced. We suggest that the issues and actions identified in the Section 20 review be considered equally relevant in the context of the reforms being pursued in this draft Bill.

The Social Services and Wellbeing Act is also an important piece of legislation affecting Local Authorities in Wales. As the majority of Social Services are delivered by individuals in the form of work, we believe there is also common ground here. The direction of reform associated with this Act and the direction of reform in the draft Bill for Fair Work should be complementary. We suggest that the progress made by Local Authorities in support of the Social Services and Wellbeing Act and the work of the National Commissioning Board in particular, be considered equally relevant in the context of the reforms being pursued in this draft Bill.

Key provisions of the draft Bill: Social partnership	
Question 2: What is your view on the social partnership duty set out in the draft Bill?	From the perspective of local authorities in Wales, the social partnership duty will not impact greatly on the way in which employer and trade union dialogue currently operates. What will be most important is that (a) the duty encourages, promotes and supports social partnership activity to the greatest extent possible, whilst (b) also ensuring that the legislation is not used in an unreasonable and punitive way where any examples of non-compliance might emerge.
Question 3: What is your view on the social partnership principles listed and defined in the table in this section?	<p>The WLGA supports the five key social partnership principles of Cooperation; Respect; Trust; Voice & Participation; and Mutual Gains, which are set out in the consultation paper.</p> <p>These principles should, though, be indicative rather than definitive, with each local authority employer and the trade unions having the flexibility to develop local arrangements which are compatible with local cultures.</p>
Question 4: What is your view on the list of bodies that are subject to the social partnership duty in the draft Bill? Should the list of bodies be wider than those subject to the well-being duty in the Well-being of Future Generations (Wales) Act 2015?	<p>The list of bodies that are subject to the partnership duty should be consistent with the list of bodies subject to public procurement rules. Any inconsistency can cause confusion or complexity.</p> <p>The scope of this draft Bill does not however signify a limitation on its application in procurement; nor of the will and willingness of people and organisations to support its policies.</p> <p>The WLGA programme of procurement reform supports a sector-agnostic whole practice approach that is equally applicable to organisations outside the scope of this Bill. This recognises the interdependence of all in public services, all aspects of supply</p>

	management are connected, we all occupy the same space.
Key provisions of the draft Bill: Fair work	
Question 5: What is your view on the proposed duties on Welsh Ministers concerning fair work objectives?	<p>It is important that Welsh Ministers consult widely with social partners when setting fair work objectives.</p> <p>Key factors to be taken into account should include the scope available at organisational and sector levels for improvement, an understanding of existing levels of performance in each sector of the devolved public service in Wales (and the reason/s for that level of performance) and an acknowledgement that each public service body has differing workforce pressures and priorities.</p> <p>Affordability will also be a key consideration in some cases.</p>
Question 6: What is your view on key challenges and priority areas for pursuing and promoting fair work?	<p>There is, in the first instance, a major piece of work to be done by Welsh Government describing, communicating and promoting the key features and characteristics of Fair Work to all of the key decision-makers and other key players within each of the bodies within the scope of this Draft Bill.</p> <p>Likewise, to support informed social partnership discussions, all lay and paid trade union representatives must have an equal understanding of what Fair Work means.</p> <p>Understanding comes before acceptance. This not only relates to the subject matter, but also to the employee relations infrastructure and decision-making arrangements which will shape the future of Fair Work developments in Wales.</p> <p>Only then can meaningful social partnership discussions take place.</p>
Question 7: Do you have a view on how to frame a legal definition of fair	This is clearly a problematical issue because of the competency constraints

<p>work which meets the limits of our legislative competence and progresses our ambitions for a ‘Fair Work Wales’?</p>	<p>which exist for Welsh Government. This needs to be further reflected on, prior to a formal Bill being developed. One option might be to adopt a “light touch” definition within the Draft Bill, with a cross reference to a more specific definition which sits in Guidance, or elsewhere, outside of the Bill.</p>
<p>Question 8: In addition to what is set out in the draft Bill, what other levers could be used by Welsh Ministers to promote and achieve fair work?</p>	<p>The Draft Bill has a fairly narrow scope insofar as it relates only to the devolved public service in Wales and some “associated” organisations. Arguably, there are far greater gains to be made in relation to Fair Work across the other sectors in Wales, in which case the Welsh Government should consider the merits of encouraging all employers in Wales, beyond the scope of devolved public services, to adopt on a voluntary basis what is being proposed on a legislative basis for the devolved public service in Wales. This is particularly relevant within the context that two thirds of the planned employer seats on the Social Partnership Council are to be awarded to non-public service bodies.</p> <p>There is a lot of influence that Local Authorities are able to deploy to encourage fair work practices in others in terms of procurement and commissioning.</p> <p>We might loosely group this and other social value objectives under the banner of ‘procurement’ but it is really about connected supply chain management. Associated practices include economic development, procurement, regulation and planning. It is also about how we manage our own organisations to interact with others.</p> <p>The mix could be open to different interpretations in different settings and it is entirely appropriate for this to be locally interpreted.</p> <p>The legislation arising from the Draft Bill might specify minimum requirements</p>

	<p>and outline the expectations of the Welsh Government in this policy area. There might however also be an opportunity and collective wish to promote this further; either a standalone policies or in conjunction with other complementary policies.</p> <p>Local Authorities are uniquely positioned to nurture and encourage provision of a type which supports fairer work and fairer practices. They should inherently know the right way to do things in their territories and they are democratically motivated to act.</p> <p>There are however barriers which constrain local authorities. We note for example that various initiatives which seek to promote thematic improvement, including fair work. Most improvement projects contain a commitment to promulgate and an ambition to do so but are linked to short-term funding support.</p> <p>While some consistency is to be welcomed, we do not accept an assumption that the solution to fair work is all about standardisation and centralisation. Solutions are often best developed, agreed and managed locally.</p>
Key provisions of the draft Bill: Socially responsible public procurement	
<p>Question 9: What are your overall views concerning the provisions and thresholds set out regarding the socially responsible procurement duties, including the categories listed within the social public works clauses?</p>	Procurement thresholds should be aligned with those in Procurement & Contracting Regulations and anchored to them otherwise it adds complexity and potential for confusion.
<p>Question 10: What is your view on other potential measures outside of those outlined that could be taken in pursuit of ensuring socially responsible public procurement?</p>	Social responsibility is a matter of basic rules for all society and of additional responsibility on public institutions governed by law and the policy choices of those institutions. In procurement, there is a duty to ensure adherence with the law, a responsibility to assure basic rules of society and a mission to promote the policies of the organisation.

	<p>The policy mission can be supported through strategic procurement management. Social Value can be promoted, good behaviours encouraged, poor behaviours discouraged. Some behaviours can be dialled in or dialled out by management and design.</p> <p>To do this, the WLGA has supported the development of the Themes Outcomes and Measures (TOMs) for Wales. Linked to the Wellbeing of Future Generations Goals, the TOMs put policy delivery into the procurement process. They enable the recognition and signalling of policy objectives. They allow virtuous behaviours to be rewarded. This includes fair work measures.</p>
<p>Question 11: What is your view on the table of contracting authorities above concerning the socially responsible procurement and social public workforce (Two-tier Code) duties?</p>	<p>No strong views [D/N check this]</p>
<p>Question 12: Should the current list of contracting authorities included within the Two-tier Workforce Code be retained or should this be brought in line with the rest of the procurement duties? Should any additional changes be made to the way in which the Code operates?</p>	<p>No strong views [D/N check this]</p>
<p>Question 13: How can greater due diligence be achieved in construction supply chain management whilst keeping costs to a minimum, especially for smaller contractors in supply chains?</p>	<p>This can be done proportionally through the TOMs. There is further potential in using the TOMs in the planning process.</p> <p>The key is to have people managing the procurement who have the capability and capacity to manage supply chains properly.</p> <p>This work can be supported and facilitated by providing better data about supply chains and tiers of supply in particular.</p>
<p>Question 14: What are your views on a potential future expansion of the</p>	<p>One form of contract management is not appropriate to all. There needs to be</p>

<p>contract management duty regarding the application, maintenance and monitoring through the supply chain of socially-responsible clauses to other sectors beyond construction (for example, social care)?</p>	<p>sufficient flexibility and scope to allow appropriate, scaleable, arrangements that are suited to purpose.</p> <p>Contract management is noticeable mainly by its absence; but it does need to occur in all sectors, not just construction.</p>
<p>Key provisions of the draft Bill: Social Partnership Council</p>	
<p>Question 15: What is your view on the provisions set out in the draft Bill concerning:</p> <p>a. Membership of the Social Partnership Council;</p> <p>b. The proposed nomination process?</p>	<p>The proposals are supported.</p>
<p>Question 16: What is your view on the proposals concerning the establishment and operations of the Social Partnership Council and its subgroups?</p>	<p>The proposals are supported and furthermore it is important to understand that the policies of the Council and its subgroups will not be formed in isolation. It is also most likely that policies will need to be delivered within established structures.</p>
<p>Question 17: What is your view on the outlined social partnership system in Wales, including the system leadership role of the Social Partnership Council and the links between different levels of social partnership?</p>	<p>The proposals are supported.</p>
<p>Supporting improvement and ensuring compliance</p>	
<p>Question 18: Concerning the social partnership duty, should an improvement and compliance mechanism be developed to ensure that all bodies meet their duties and make a collective contribution to the delivery of the proposed outcomes? If yes, do you have any suggestions as to how this might work in practice?</p>	<p>Taking into account the references in the Consultation paper (123 and 124) to the Social Partnership Council reaching consensus about the matters it considers, to the greatest extent possible, and as the Bill mainly applies only to the devolved public service, it would appear perverse to put in place a punitive compliance regime.</p> <p>If it is acknowledged that all employers will have strengths and weaknesses in terms of an assessment against Fair Work characteristics, it is contended that each body will need to set out on a journey of improvement, with many different starting points. Current</p>

priorities will determine where those starting points are the current time. The key features of each organisation's Improvement Plan, and progress made, could become part of the annual reporting arrangement to Welsh Government.

There are extensive audit and regulatory regimes already existing, eg HSE, EHRC, Education Workforce Council, Care Council Wales and Audit Wales.

The aim of the Bill will be to provide a new focus and new priorities for public service bodies, and to articulate and promote what is expected from all other employers in Wales - through the work of the Social Partnership Council.

Within this context, one alternative approach would be establish tiers of standards relating to the Welsh Government's Fair Work objectives, which would recognise and reward organisational development; one existing example of such practice is the Corporate Health Standard.

From a procurement perspective, there must be a functional, integrated and reformed procurement function which is able to support the implementation of the policies of the Council.

Our practical suggestion is that implementation of procurement reforms be undertaken with support from the professional officer network; the WLGA National Procurement Network and its subgroup, the National Social Value Task Force Wales.

Among the reforms implemented in support of the Social Services and Wellbeing Act is the reform of commissioning and the establishment of the National Commissioning Board. Our practical suggestion is that implementation of commissioning

	reforms be undertaken in collaboration with the National Commissioning Board.
Question 19: Should there be an adjudication mechanism at national Social Partnership Council level for the escalation of any failure to agree at sector level? If yes, do you have any suggestions as to how this might work in practice?	No.
Question 20: What are your views on the enforcement and compliance measures proposed in the draft Bill concerning socially responsible procurement and contact management? What other measures could be applied? Do you have any suggestions as to how any additional enforcement and compliance measures might work in practice?	Please also response to Question 18 above.
Equalities and impacts	
Question 21: Do you agree with the impacts that are outlined in this section? Are there potential unintended consequences on certain groups that should be considered?	<p>The consultation document notes that the draft Bill is 'intended to positively impact on various protected characteristics which face persistent and widespread inequalities in the workplace through promoting fair work' and that 'Tackling inequality and promoting equality and inclusion for all protected groups is integral to all six characteristics of fair work and therefore to the fair work agenda'.</p> <p>The document notes that White Paper consultation feedback referenced the need to focus on protected groups and a draft equality assessment has been undertaken, however, this is not included in the consultation and it is therefore not possible to provide additional comment. It is important that a full Equality Impact Assessment is published should the Draft Bill progress into legislation.</p>
Question 22: Concerning the Regulatory Impact Assessment, do you agree with the assessment of the likely costs and benefits associated with the provisions in the draft Bill? If not,	There is broad agreement but as we have pointed out in the past it is difficult to quantify any of these. The question going forward is will the new Act be thoroughly evaluated in good time.

<p>please explain which specific element(s) you disagree with and why.</p>	
<p>Question 23: Do you have any additional or alternative evidence which could help to inform the final Regulatory Impact Assessment?</p>	<p>If we could work with WG on the RIA then we would be happy to share any workforce or procurement data that WLGA or Data Cymru.</p>
<p>Question 24: We would like to know your views on the effects that the proposals set out in the draft Bill would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English.</p> <p>What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?</p>	<p>By supporting local economies thought local supply chains it will not be detrimental to the Welsh Language or treat it less favourably.</p>
<p>Question 25: Please also explain how you believe the proposed policy in the draft Bill could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favorably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favorably than the English language.</p>	<p>No additional comments.</p>
<p>Question 26: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.</p>	<p>No additional comments.</p>