

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

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

SPPP 28

Ymateb gan: Comisiynydd y Gymraeg | Response from: Welsh Language Commissioner





Jenny Rathbone MS
Chair
Equality and Social Justice Committee

SeneddEquality@senedd.wales

27 July 2022

Dear Ms Rathbone,

Consultation – Social Partnership and Public Procurement (Wales) Bill

Thank you very much for the opportunity to participate in the above consultation. The Welsh Language Commissioner responded to the Welsh Government's consultation on the Draft Social Partnership and Public Procurement (Wales) Bill in April 2021. As was the case then, we are responding to this consultation from a policy perspective rather than that of an employer and contracting authority, as defined in the Bill. We understand that the Commissioner, as a contracting authority, will be subject to the provisions of the Bill in relation to public procurement in accordance with Part 3 of the Bill.

Public procurement and the Welsh language

The Well-Being of Future Generations (Wales) Act 2015 is referred to frequently in the Explanatory Memorandum. It is noted that the Bill complements the Well-Being Act, which requires public bodies to operate in ways which will pursue the economic, social, environmental and cultural well-being of Wales (clause 54). The Memorandum explains, "The themes captured by each of the WFG Act 2015 well-being goals are considered to have relevance to the social partnership agenda" (clause 70). We welcome this as it means that the Welsh language is included in this agenda, in the context of the well-being goal, "A Wales of vibrant culture and thriving Welsh language". We also support the

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requirement, outlined in the Memorandum's Explanatory Notes, that contracting authorities maximise their contributions towards the well-being goals through their public procurement activities (clause 65).

However, there is no reference to the Welsh Language Standards – which are directly relevant. The effect of imposing Welsh Language Standards duties on public organisations is that they have a statutory duty and are expected to comply with the standards. If they do not do so, they are open to facing sanction. Contracts between public bodies and third-party providers acting on behalf of the public bodies contain very specific requirements so that public bodies do not make themselves liable to fail to adhere to statutory language duties.¹ There are five categories of standards and one relates to the delivery of services, and the ability to supply them by a person on behalf of the body, as well as the administration of the tendering process. The Senedd expects the Welsh Language Commissioner to maintain these bodies' compliance with the Welsh Language Standards through the implementation of the Welsh Language Commissioner's Enforcement Policy. It is important, therefore, that any provisions in this Bill are consistent with any provisions that have been introduced by virtue of the Welsh Language (Wales) Measure 2011 and associated regulations.

The Welsh language at work, fair work and outsourcing services

The Bill will amend section 4 of the Well-being of Future Generations Act 2015 by replacing 'decent work' with 'fair work' within the current 'A prosperous Wales' goal. Ensuring the opportunity to use Welsh at work, to develop Welsh language skills or to gain new language skills is relevant in this regard and is an expectation which has been set in

¹ See [Code of Practice for the Welsh Language Standards \(No. 1\) Regulations 2015 \(welshlanguagecommissioner.wales\)](https://www.welshlanguagecommissioner.wales).



the form of specific duties. As described above, it is important that you as a Committee are aware that there is a category of standards that apply to the workforce and the internal administration of a body as well as staffing and skills development issues. It will be important to consider the Operational Standards in this regard.

These standards apply to the objective described in the Explanatory Memorandum, “to equip the workforce with the skills and capabilities needed to access jobs that provide fair work” (clause 25). It is also important, given the influence of the public sector, that is, “The devolved public sector is a significant employer in Wales. It directly shapes the experience of work for those who work within it and it can have an indirect influence throughout the public sector and wider economy through leading by example on progressive approaches to its workforce.” (clause 27) This applies as much to the prestige given to the Welsh language in the workplace as to other aspects of the world of work.

Standards regarding the use of Welsh at work also apply to the section, Improved Delivery of Public Services. It is noted, for example, “Those closest to public service delivery (workers and their employers) are not always being involved in the discussions around decisions to improve public services, therefore their expertise and insights are not being utilised. Better quality public services take on the views of the workers and employers who deliver these services.” (clause 29) It is vital to consider the needs of Welsh speakers who are public service users, and those who provide those services to them. The opportunity to learn in-service is an opportunity for those who wish to learn the Welsh language as a skill and a matter of linguistic fairness that is central to the Operating Standards.

Duties arising from the Welsh Language Standards also apply to chapter 2, clause 26 of the Bill relating to service outsourcing contracts. As the Explanatory Memorandum states, “contracting and retendering processes involving staff transferring from public bodies should be carried out to ensure that terms and conditions are protected” (clause 103). It must be ensured that staff transfer arrangements or collaboration between organisations or partners do not deprive staff of the ability to work through the medium of Welsh.

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Instead, such arrangements should promote and develop opportunities to use Welsh at work. This section of the Bill needs to be strengthened to identify this need. As such, it must be ensured that the ‘public services outsourcing and workforce code’ that the Welsh Ministers will be required to publish in accordance with section 32 of the Bill makes provisions about the right to use Welsh in the workplace and all duties arising from Operating Standards or other standards as contained in relevant regulations.

Outside the provisions of the standards regime there is also scope to consider Part 6 of the Welsh Language Measure and the freedom to use Welsh.

The proposed Social Partnership Council

It is proposed to create a statutory Social Partnership Council which will be an advisory body. The Explanatory Memorandum (clause 50) notes that “The SPC will be a separate legal entity to the Welsh Government.” We would like clarity, therefore, on how the proposed Council will be subject to the Welsh Language Standards. We consider that greater clarity and guidance must be given on the status of the body in the context of the Welsh Language Measure and what practical steps will be taken to provide assurance in terms of the body using the Welsh language and considering the language within the scope of its work.

The Bill does not require an understanding of Welsh language issues from prospective Council members. This requirement should be included on the face of the Bill. Given the fact that the Council will provide “national leadership to provide direction and examples of good practice” (clause 18) and provide information and advice to Welsh Ministers “with the goal of improving public services and the social, economic, environmental and cultural well-being of Wales” (clause 45), it is essential that it has expertise and knowledge of the Welsh language in the context of these issues. In that respect, it must be remembered that one category of Welsh Language Standards relates to the need to consider the impact of

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policies on the Welsh language in developing them.² Given its policy role, therefore, we believe that it is essential that the Council is subject to the Welsh Language Standards.

It must also be ensured that the Welsh language is central to the Council's operation from the outset. The Welsh language should be considered in all the Council's arrangements, including at the remote meetings mentioned in the Explanatory Notes (clause 42). Reference is made here to the possibility of holding meetings via the internet or by telephone for reasons of flexibility and effectiveness. Consideration should be given to how to ensure that a simultaneous translation service is available in such circumstances, in order to facilitate the use of the Welsh language. Again, clarity in relation to the Welsh Language Standards would facilitate this consideration.

We very much hope that the Bill's objectives will be realised in terms of the Welsh language, as set out in the Welsh Language impact assessment (clauses 408-413):

- “promoting and facilitating the use of the Welsh language in the workplace and in the delivery of our public services” (clause 409);
- “embedding best practice in developing specifications and designing procurement exercise to have a positive impact on increasing use of the Welsh language” (clause 411); and
- “upskilling Welsh speakers and providing procurement guidance and documentation bilingually [which] will contribute to development of a more consistent, standardised procurement infrastructure that delivers improved public procurement practice” (clause 412).

² See [Policy Making Standards: Creating opportunities for persons to use the Welsh language and treating the Welsh language no less favourably than the English language \(welshlanguagecommissioner.wales\)](https://welshlanguagecommissioner.wales)



However, in order to do so it is necessary to strengthen elements of the Bill by:

- referring clearly to the Welsh language within the Bill in the context of fair work and public procurement; and
- providing clarity about the Social Partnership Council's use of the Welsh language and how it will consider the language within the scope of its work. Clarity is needed regarding its status and whether steps should be taken to place it within the statutory framework of the Welsh Language Standards, given its policy work in particular.

We would like to refer you to our advice on the Welsh language in contracting.³ The advice is intended for local use but we hope that it testifies to how the Commissioner is trying to ensure that support is given as well as providing added value to organisations through our work.

We hope that the comments above will be useful to you as you scrutinise the Bill. Thank you once again for the opportunity to contribute to your consultation.

Yours sincerely,

Gwenith Price
Deputy Welsh Language Commissioner

³ See [welsh-language-considerations-for-public-service-contracts.pdf \(welshlanguagecommissioner.wales\)](https://www.welshlanguagecommissioner.wales/welsh-language-considerations-for-public-service-contracts.pdf)