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Deputy Minister for Social Partnership



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair of the Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

15 December 2022

Dear Huw,

Social Partnership and Public Procurement (Wales) Bill

During the General Principles debate on the Social Partnership and Public Procurement (Wales) Bill on 29 November 2022 I stated that I would write to you to confirm in more detail the Welsh Government's responses to your Committee's recommendations.

I confirmed in the debate that the Welsh Government would not be accepting recommendation 1 because we do not consider it appropriate to include within the Bill's 'Interpretation' section a definition which is set out elsewhere only in statutory guidance. The guidance referred to is issued under a separate power (as opposed to duty) in another Act and serves a specific purpose which may not align with the duties under this Bill and, indeed, that guidance may change in the future or could, potentially, be withdrawn by a future Government. As I said in plenary, the Bill provides for Welsh Ministers to issue guidance to public bodies on the operation of the Social Partnership Duty and that is the appropriate way in which to deal with matters like this.

Recommendation 2 is accepted. We will develop and publish advice to assist individuals and organisations to improve their understanding of fair work, their awareness of the benefits of fair work, and illustrative examples of steps that organisations can take to promote fair work. This advice will be of particular interest to those organisations who are subject to the provisions of the Social Partnership and Public Procurement (Wales) Bill and the trade unions who represent workers in those organisations. However, we also intend to make the advice of broader interest to businesses, employers, and trade unions more generally.

I set out my reasons for rejecting recommendation 3 during the debate. We will not be applying the negative procedure to the power to issue the public services outsourcing and workforce code because the Code is not legislative, and as such it would not be appropriate for it to be made subject to the negative procedure as if it had legislative force. The Code will however be subject to wide consultation, which will help ensure it is targeted to the

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

audience it addresses.

The Welsh Government accepts recommendations 4 and 5 and we will bring forward amendments at stage 2 to add to the Bill a specific duty to consult in relation to the Code to be made under section 32 and the guidance to be made under section 31.

Recommendation 6 is not accepted for the reasons I set out in plenary: namely that we will be developing the Code in social partnership and in consultation with stakeholders. In order to do this we will need to engage these groups from the beginning. This approach means we will not be in a position to publish a draft version of the Code before stage 3 takes place in March.

I said during the debate that I would provide you with further details as to why recommendations 7 and 8 are rejected. These recommendations ask that we amend the Bill so that the regulations to be made under sections 38(3)(a) and 38(3)(b) are subject to the affirmative procedure, rather than the negative procedure. The Committee is aware that in determining which procedure is most appropriate Ministers apply the principles set out in the [Welsh Government guidelines on subordinate legislation: draft affirmative or negative assembly procedure](#).

Any regulations we make under 38(3)(a) and 38(3)(b) will be to provide details of any further matters (in addition to those already set out in sections 38(1) and (2)) that contracting authorities' procurement strategies must contain. This is essentially a future-proofing arrangement to ensure that any changes in procurement practice - which could be dictated by wider statutory changes over which the Welsh Government may have no discretion - are able to be applied if this should become necessary. We are satisfied that the negative procedure provides sufficient opportunity for democratic scrutiny of any regulations made in exercise of this power.

Finally, in relation to recommendation 9, I wish to reiterate the apology I made in plenary to the Committee: the reference to a 'convention' in my letter of 15 October was included in error and I acknowledge that no such convention exists.

I trust that the information provided in this letter is useful to the Committee. I will also ensure that the Committee Clerk is informed as soon as our stage 2 government amendments have been published on the Documents Laid webpage.

I have attached for information copies of the letters I have sent to the chairs of the Equality and Social Justice Committee and the Finance Committee, and I am sending a copy of this letter to the chairs of both of those Committees also.

Yours sincerely,



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