

ACCOMPANYING DOCUMENTS

Explanatory Notes and an Explanatory Memorandum are printed separately.

Social Partnership and Public Procurement (Wales) Bill

[AS AMENDED AT STAGE 2]

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Social Partnership and Public Procurement (Wales) Bill

[AS AMENDED AT STAGE 2]

An Act of Senedd Cymru to make provision about sustainable development in accordance with a principle of social partnership; about socially responsible public procurement; establishing a Social Partnership Council for Wales; and for connected purposes.

Having been passed by Senedd Cymru and having received the assent of Her Majesty, it is enacted as follows:

PART 1

THE SOCIAL PARTNERSHIP COUNCIL

Establishment and purpose

1 Social Partnership Council for Wales

- (1) There is to be a Social Partnership Council for Wales (“SPC”).
- (2) For the purposes of improving economic, environmental, social, and cultural well-being (including by improving public services) in Wales, the SPC may provide information and advice to the Welsh Ministers in relation to—
 - (a) the social partnership duties which this Act imposes on public bodies and the Welsh Ministers (see Part 2);
 - (b) the pursuit of the “A prosperous Wales” well-being goal by public bodies when carrying out sustainable development under the WFGA 2015 (see Part 2);
 - (c) the functions conferred on contracting authorities and the Welsh Ministers under Part 3 (socially responsible public procurement).
- (3) The SPC may provide information or advice on a matter referred to in subsection (2) of its own accord or in response to a request made by the Welsh Ministers.
- (4) Where the SPC receives a request from the Welsh Ministers under subsection (3), the SPC must provide the information or advice as soon as reasonably practicable.

2 Membership of the Social Partnership Council for Wales

- (1) The SPC is to consist of the following members—
 - (a) members from the Welsh Government (“Welsh Government members”),
 - (b) 9 representatives of employers in Wales (“employer representatives”), and
 - (c) 9 representatives of workers in Wales (“worker representatives”).
- (2) The Welsh Government members are to include the First Minister and, where invited by the First Minister from time to time—
 - (a) any other Welsh Minister;

- (b) any Deputy Welsh Minister;
- (c) the Counsel General;
- (d) any member of staff of the Welsh Government.

- 5
- (3) The First Minister must appoint all the employer representatives and worker representatives (collectively, “appointed members”).
- (4) The First Minister must take all reasonable steps to appoint the initial 9 employer representatives and the initial 9 worker representatives within 6 months beginning with the day after this subsection comes into force.
- 10
- (5) In this Act, a reference to the “Social Partnership Council for Wales” or “SPC” is a reference to the members of the SPC acting jointly; accordingly, a function expressed as a function of the SPC is a function of each member that may only be exercised jointly with the other members.

3 Employer representatives

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The employer representatives are to consist of individuals who the First Minister considers represent public body employers, private sector employers, voluntary organisation employers, higher education employers and further education employers.

4 Worker representatives

The worker representatives are to consist of individuals who the First Minister considers represent staff working for each category of employer referred to in section 3.

5 Nomination of appointed members

- 20
- (1) Before appointing employer representatives, the First Minister must seek nominations from persons or bodies who the First Minister considers represent the views of the categories of employer referred to in section 3.
- 25
- (2) Before appointing worker representatives, the First Minister must seek nominations from the body representing trade unions in Wales known as Wales TUC Cymru.
- (3) When appointing employer representatives, the First Minister must have regard to any nominations made under subsection (1).
- (4) When appointing worker representatives, the First Minister must only appoint individuals who have been nominated under subsection (2).

6 Duration of appointments

- 30
- (1) Appointed members are appointed for 3 years unless –
- (a) the First Minister terminates the appointment by notifying the member in writing, or
 - (b) the appointed member resigns by notifying the First Minister in writing.
- 35
- (2) The First Minister must fill any vacancies as soon as reasonably practicable.

*Operation and administration***7 Meetings, procedures and administrative support**

- (1) The SPC must meet at least 3 times in each 12 month period beginning with the day after the First Minister has made all the initial appointments mentioned in section 2.
- 5 (2) Where possible, the First Minister must chair the SPC's meetings.
- (3) Where it is not possible for the First Minister to chair a meeting, the meeting must be chaired by a Welsh Minister or Deputy Welsh Minister nominated by the First Minister.
- (4) Within 6 months beginning with the day after this subsection comes into force, the Welsh Ministers must specify and publish –
- 10 (a) the quorum for SPC meetings, and
- (b) the procedures to be followed by the SPC, in so far as they are not specified in this Act.
- (5) The Welsh Ministers may, after consulting the SPC, revise anything specified under subsection (4) and must publish any such revisions.
- 15 (6) The SPC's procedures must include –
- (a) the procedures for arranging meetings including notice to be given to attendees and how attendees may add items to the agenda for meetings;
- (b) the procedure for resolving a disagreement between members relating to the exercise of the SPC's functions;
- 20 (c) the procedures for providing information and advice to the Welsh Ministers.
- (7) The Welsh Ministers must make administrative support available to the SPC.

8 Subgroups

- (1) The SPC may establish subgroups.
- (2) A subgroup may –
- 25 (a) carry out any function delegated to it by the SPC;
- (b) help the SPC carry out its functions in any ways specified by the SPC.
- (3) A subgroup –
- (a) must be chaired by a member of the SPC, and
- (b) may include other members of the SPC and other individuals.

9 Public procurement subgroup

- (1) The SPC must take all reasonable steps to establish a public procurement subgroup within 6 months beginning with the day after this subsection comes into force.
- (2) Within 6 months beginning with the day after this subsection comes into force, the Welsh Ministers must specify and publish –
- (a) the quorum for public procurement subgroup meetings, and
 - (b) the procedures to be followed by the public procurement subgroup, in so far as they are not specified in this Act.
- (3) The Welsh Ministers may revise anything specified under subsection (2) and must publish any such revisions.
- (4) The public procurement subgroup’s procedures must include –
- (a) the procedures for arranging meetings including notice to be given to attendees and how attendees may add items to the agenda for meetings;
 - (b) the procedure for resolving a disagreement between members relating to the exercise of the subgroup’s functions;
 - (c) the procedures for providing information and advice to the SPC and the Welsh Ministers.

10 Provision of information and advice to the SPC by public procurement subgroup

- (1) The public procurement subgroup may provide information and advice to the SPC about the functions conferred on contracting authorities and the Welsh Ministers under Part 3 (socially responsible public procurement).
- (2) The SPC may –
- (a) provide to the Welsh Ministers information or advice received from the public procurement subgroup, or
 - (b) revise such information or advice and provide it as revised to the Welsh Ministers.
- (3) If the Welsh Ministers request information or advice from the SPC about a matter referred to in subsection (1), the SPC must –
- (a) seek that information or advice from the public procurement subgroup, and
 - (b) provide it, or revise it and provide it as revised, as soon as reasonably practicable.
- (4) If the Welsh Ministers consult the public procurement subgroup under section 30(2)(d) or 36(2)(d), the procurement subgroup must provide the Welsh Ministers with such information and advice as it considers appropriate as soon as reasonably practicable.
- (5) If a public procurement subgroup has not yet been established under section 9(1), the SPC may nevertheless provide information and advice to the Welsh Ministers about a matter referred to in subsection (1).

11 Meeting remotely

The SPC or a subgroup may hold a meeting by means of any equipment or other facility which enables persons who are not in the same place to speak to and be heard by each other (whether or not the equipment or facility enables those persons to see and be seen by each other).

12 Expenses

The Welsh Ministers may meet the expenses of –

- (a) an employer representative;
- (b) a worker representative;
- (c) a member of a subgroup.

13 Supplementary powers

The SPC may do anything which is calculated to facilitate, or which is conducive or incidental to, the exercise of its functions or the functions of a subgroup.

*Interpretation***14 Interpretation of Part 1**

In this Part –

“Deputy Welsh Minister” (*“un o Ddirprwy Weinidogion Cymru”*) means a person holding office under section 50 of the Government of Wales Act 2006;

“employer” (*“cyflogwr”*) has the same meaning as in the Employment Rights Act 1996 (c. 18);

“further education employer” (*“cyflogwr addysg bellach”*) means an employer in the further education sector within the meaning of section 91(3) of the Further and Higher Education Act 1992 (c. 13);

“higher education employer” (*“cyflogwr addysg uwch”*) means an employer in the higher education sector within the meaning of section 91(5) of the Further and Higher Education Act 1992;

“private sector employer” (*“cyflogwr sector preifat”*) means an employer that is not –

- (a) a body, office or holder of an office whose functions are wholly or mainly of a public nature,
- (b) a voluntary organisation employer,
- (c) a further education employer, nor
- (d) a higher education employer;

“public body employer” (*“cyflogwr corff cyhoeddus”*) means an employer that is one of the persons listed as a “public body” in section 6(1) of the WFGA 2015, other than the Welsh Ministers;

“voluntary organisation employer” (*“cyflogwr sefydliad gwirfoddol”*) means an employer that is a “relevant voluntary organisation” within the meaning of section 74(2) of the Government of Wales Act 2006.

PART 2

SOCIAL PARTNERSHIP AND SUSTAINABLE DEVELOPMENT

15 Overview of Part and interpretation

- 5 (1) For the purposes of improving economic, environmental, social, and cultural well-being (including by improving public services) in Wales, this Part –
- (a) imposes new social partnership duties as part of the well-being duty in section 3(1) of the WFGA 2015;
 - (b) amends the “A prosperous Wales” well-being goal to be pursued by public bodies when carrying out sustainable development under the WFGA 2015 so that securing fair work is part of the description of the goal.
- 10 (2) For the purposes of this Part, “sustainable development” has the meaning given by section 2 of the WFGA 2015.
- (3) In this Part, a “public body” means a person listed as a “public body” in section 6(1) of the WFGA 2015, but for the purposes of sections 16 and 18 it does not include the Welsh Ministers.
- 15

16 Social partnership duty

- 20 (1) In carrying out sustainable development, a public body must, in so far as is reasonable, seek consensus or compromise with its recognised trade unions or (where there is no recognised trade union) other representatives of its staff on –
- (a) the well-being objectives to be set under section 3(2)(a) of the WFGA 2015;
 - (b) decisions of a strategic nature to be made about the reasonable steps the body takes (in the exercise of its functions) to meet those objectives under section 3(2)(b) of the WFGA 2015.
- 25 (2) For the purposes of subsection (1), in order to seek consensus or compromise a public body must include its recognised trade unions or other representatives of its staff in the process of setting objectives or making decisions, by (in particular) –
- (a) consulting them at a formative stage of the process, and
 - (b) otherwise involving them throughout the process by –
 - 30 (i) providing sufficient information to enable them to properly consider what is proposed, and
 - (ii) providing sufficient time to enable them to adequately consider what is proposed and respond.
- (3) In considering what is reasonable under subsection (1) a public body must take into account guidance published by the Welsh Ministers.
- 35 (4) The Welsh Ministers must consult with the SPC before publishing the guidance referred to in subsection (3).

17 Social partnership duty: Welsh Ministers

When making decisions of a strategic nature about the reasonable steps the Welsh Ministers take (in the exercise of their functions) under section 3(2)(b) of the WFGA 2015 (to meet the objectives set under section 3(2)(a) of the WFGA 2015), the Welsh Ministers must consult with the SPC.

18 Social partnership reports

- (1) A public body must prepare, in respect of each financial year, a report of what it has done to comply with the duty imposed under section 16.
- (2) The report must be agreed with the public body's recognised trade unions or (where there is no recognised trade union) other representatives of its staff, or contain a statement explaining why it was not agreed.
- (3) The public body must publish the report, and submit it to the SPC, as soon as reasonably practicable after the end of the financial year.

19 Social partnership reports: Welsh Ministers

- (1) The Welsh Ministers must prepare, in respect of each financial year, a report of what they have done to comply with the duty imposed under section 17.
- (2) The report must be agreed with the SPC or contain a statement explaining why it was not agreed.
- (3) The Welsh Ministers must, as soon as reasonably practicable after the end of the financial year –
 - (a) publish the report, and submit it to the SPC;
 - (b) lay the report before the Senedd.

20 Fair work

In section 4 (well-being goals) of the WFGA 2015, in Table 1, in the description of the "A prosperous Wales" goal, for "decent work" substitute "fair work".

PART 3**SOCIALLY RESPONSIBLE PUBLIC PROCUREMENT****CHAPTER 1****INTRODUCTION***Key concepts***21 Public contracts**

- (1) In this Part, a "public contract" means a contract between one or more economic operators and one or more contracting authorities; and having as its object the execution of works, the supply of products or the provision of services.

- (2) For the purposes of this Part, a framework agreement is treated as a public contract (and references to “public contract” are to be construed accordingly).

22 Contracting authorities

- (1) In this Part, a “contracting authority” means a body, office-holder or other person listed in Schedule 1.
- (2) But the Welsh Ministers are not a contracting authority for the purposes of sections 29, 30, 35, 36 and 41.
- (3) In this Part, a contracting authority’s area is the area by reference to which the authority primarily exercises its functions, disregarding any areas outside Wales.
- (4) The Welsh Ministers may by regulations amend this section, and Schedule 1, so as to modify the meaning of a contracting authority.

23 Public procurement

For the purposes of this Part, references to “public procurement” are to a contracting authority –

- (a) designing and carrying out any procedure preceding the award of a public contract including, in particular, seeking bids and selecting economic operators;
- (b) drafting, negotiating and awarding a public contract;
- (c) managing a public contract after it has been awarded;

and references to “procurement” are to be construed accordingly.

CHAPTER 2

SOCIALLY RESPONSIBLE PROCUREMENT DUTY

The socially responsible procurement duty

24 Socially responsible procurement duty

- (1) A contracting authority must seek to improve the economic, social, environmental and cultural well-being of its area by carrying out public procurement in a socially responsible way.
- (2) A contracting authority carries out public procurement in a socially responsible way by taking action, in accordance with the sustainable development principle, aimed at contributing to the achievement of the well-being goals listed in section 4 of the WFGA 2015 (referred to for the purposes of this Part as the “well-being goals”).
- (3) A contracting authority must set and publish objectives (“socially responsible procurement objectives”) designed to maximise its contribution to achieving the well-being goals.
- (4) Schedule 2 makes provision about revising and reviewing socially responsible procurement objectives.

- (5) In taking action aimed at contributing to the achievement of the well-being goals, a contracting authority must –
- (a) take all reasonable steps to meet its socially responsible procurement objectives when it carries out public procurement in relation to any prescribed contract;
 - (b) take the particular actions referred to in section 25 when it carries out public procurement in relation to a major construction contract;
 - (c) take the particular actions referred to in section 26 when it carries out public procurement in relation to an outsourcing services contract.
- (6) Despite subsection (1), a contracting authority must not include provisions in a prescribed contract that –
- (a) are not proportionate (taking into account the estimated value of the contract);
 - (b) would conflict with any other enactment or rule of law relating to public procurement.
- (7) For the purposes of subsection (2), “the sustainable development principle” has the meaning given by section 5 of the WFGA 2015.
- (8) In this Part, a “prescribed contract” means –
- (a) a major construction contract (see section 25),
 - (b) an outsourcing services contract (see section 26), and
 - (c) any other public contract of a description prescribed by the Welsh Ministers by regulations.

25 Socially responsible procurement duty: major construction contracts

- (1) The particular actions mentioned in section 24(5)(b) are –
- (a) having regard to model social public works clauses published by the Welsh Ministers under section 27;
 - (b) in designing and carrying out procedures preceding the award of the major construction contract, considering whether the contract should include social public works clauses;
 - (c) in negotiating and awarding the contract, taking all reasonable steps –
 - (i) to include any social public works clauses it considers should be included;
 - (ii) to ensure that clauses included in the contract can be implemented;
 - (d) in managing the contract, taking all reasonable steps to ensure that any social public works clauses included in the contract are implemented;
- (see sections 27 to 31 for further provision about the meaning of “social public works clauses” and their application to major construction contracts).
- (2) In this Part, a “major construction contract” is a public contract with an estimated value equal to or greater than £2,000,000, which is –
- (a) a public works contract,

- (b) a works contract, or
- (c) a works concession contract.

(3) The Welsh Ministers may by regulations amend this section to modify the meaning of a major construction contract.

5 **26 Socially responsible procurement duty: outsourcing services contracts**

(1) The particular actions mentioned in section 24(5)(c) are –

- (a) having regard to the public services outsourcing and workforce code published by the Welsh Ministers under section 32;
- (b) in designing and carrying out procedures preceding the award of the outsourcing services contract, considering whether the contract should include social public workforce clauses;
- (c) in negotiating and awarding the contract, taking all reasonable steps –
 - (i) to include any social public workforce clauses it considers should be included;
 - (ii) to ensure that clauses included in the contract can be implemented;
- (d) in managing the contract, taking all reasonable steps to ensure that any social public workforce clauses included in the contract are implemented;

(see sections 32 to 37 for further provision about the public services outsourcing and workforce code, the meaning of “social public workforce clauses” and their application to outsourcing services contracts).

(2) In this Part, “an outsourcing services contract” means a contract under which –

- (a) a requirement to provide a public service provided by, or previously provided by, a contracting authority is transferred to another person, or
- (b) another person agrees to undertake any other function undertaken by, or previously undertaken by, a contracting authority;

and “outsourced” is to be construed accordingly.

Social public works clauses

27 **Social public works clauses in major construction contracts**

(1) The Welsh Ministers must publish model clauses for major construction contracts (“social public works clauses”) designed to bring about the improvements to economic, social, environmental and cultural well-being listed under each category in the Table in subsection (2).

(2) The categories and improvements are –

TABLE 1

Category	Improvements
Payments	Ensuring and enforcing prompt payments.
Employment	Providing employment opportunities to younger people, older people, the long term unemployed, people with disabilities or people who are otherwise disadvantaged.
Compliance	Ensuring compliance with legal obligations in relation to employment rights (including the minimum and living wage), health and safety, and trade union representation.
Training	Providing appropriate training for workers.
Sub-contracting	Providing opportunities to small and medium sized enterprises and voluntary organisations to execute works, supply products or provide services.
Environment	Requiring sustainable management of natural resources, use of sustainable materials, resilience to the impact of climate change, reduction of greenhouse gas emissions, and enhancement of the natural environment and biodiversity.

(3) A reference in this Part to a contracting authority including social public works clauses in major construction contracts –

- (a) is a reference to all of the model contract clauses published in respect of each of the improvements under the categories in subsection (2), and
- (b) means incorporating clauses that have the same or substantially the same effect as the published model contract clauses.

28 Social public works clauses in subcontracts

- (1) Subsection (2) applies if a contracting authority intends to include social public works clauses in a major construction contract it agrees with an economic operator (a “contractor”) (the authority having considered whether to do so in accordance with section 25(1)(b)).
- (2) The authority must take all reasonable steps to ensure that the obligations in the social public works clauses are implemented where the contractor enters into a subcontract with any other economic operator (a “subcontractor”).
- (3) Examples of the reasonable steps that could be taken under subsection (2) include –
 - (a) ensuring that social public works clauses having the same or substantially the same effect as those in the major construction contract are included in any subcontract –
 - (i) the contractor enters into with a subcontractor, and

- (ii) the subcontractor enters into with a subsequent subcontractor (and so on);
- (b) ensuring that the contracting authority can enforce the obligations in social public works clauses under the major construction contract or under a subcontract;
- (c) requiring the contractor to obtain the contracting authority's consent before entering into a subcontract, with consent being made conditional upon social public works clauses having the same or substantially the same effect as those included in the major construction contract being included in any subcontract;
- (d) requiring the contractor to inform the contracting authority if it intends to enter into a subcontract which does not include social public works clauses having the same or substantially the same effect are those included in the major construction contract;
- (e) requiring the contractor to monitor the extent any obligations in social public works clauses are implemented where the contractor has entered into a subcontract with any other economic operator.

15 **29 Social public works clauses: notifying the Welsh Ministers**

- (1) A contracting authority must notify the Welsh Ministers if, in relation to a major construction contract –
 - (a) the authority does not intend to include social public works clauses in the contract (despite having considered whether to do so in accordance with section 25(1)(b));
 - (b) social public works clauses are not included in the contract (despite the authority having taken all reasonable steps in accordance with section 25(1)(c)(i));
 - (c) there is no process in place for ensuring that obligations in social public works clauses are implemented (despite the authority having taken all reasonable steps in accordance with section 25(1)(c)(ii));
 - (d) there is no process in place for ensuring that obligations in social public works clauses are implemented where the contract is subcontracted (despite the authority having taken all reasonable steps in accordance with section 28(2)).
- (2) A notification under subsection (1) must be made as soon as reasonably practicable and give the authority's reasons.

30 **30 Social public works clauses: Welsh Ministers' response**

- (1) Where the Welsh Ministers receive a notification from a contracting authority under section 29(1), they must –
 - (a) publish a summary of the notification, and
 - (b) consider whether they are satisfied with the reasons given in it.

- (2) In considering whether they are satisfied with the reasons, the Welsh Ministers may –
- (a) consult the authority;
 - (b) by notice require the authority to provide any documents or other information as the Welsh Ministers may require for the purposes of subsection (1) in such form or manner as may be specified in the notice;
 - (c) provide the SPC public procurement subgroup (see section 9) with a copy of the notification under section 29(1) and any documents or other information received under paragraph (b);
 - (d) consult the SPC public procurement subgroup.
- (3) If, following consideration under subsection (1), the Welsh Ministers are satisfied, they must publish a summary of their reasons for being satisfied.
- (4) If, following consideration under subsection (1), the Welsh Ministers are not satisfied, they may direct the contracting authority to take all reasonable steps to –
- (a) include social public works clauses in the major construction contract,
 - (b) put processes in place for ensuring that obligations in social public works clauses are implemented, or
 - (c) put processes in place for ensuring that obligations in social public works clauses are implemented where the contract is subcontracted.
- (5) Where the Welsh Ministers give a direction under subsection (4), they must –
- (a) inform the SPC public procurement subgroup that they have given the direction, and
 - (b) publish the direction.
- (6) Where the Welsh Ministers do not give a direction under subsection (4) despite not being satisfied, they must –
- (a) inform the SPC public procurement subgroup that they have not given a direction, and
 - (b) publish a summary of –
 - (i) their reasons for not being satisfied, and
 - (ii) their reasons for not giving a direction despite not being satisfied.
- (7) The Welsh Ministers must take any action taken under subsections (2)(a) or (b) as soon as reasonably practicable.
- (8) A contracting authority must provide any documents or other information it is required to provide under subsection (2)(b) as soon as reasonably practicable.
- (9) Nothing in this section requires the Welsh Ministers to publish information which, following consultation with the appropriate contracting authority, the Welsh Ministers consider would be exempt from disclosure were it to be subject to a request for information under the Freedom of Information Act 2000 (c. 36).

31 Social public works clauses: Welsh Ministers' contracts

- (1) The Welsh Ministers must publish a statement if, in relation to a major construction contract—
- (a) they do not intend to include social public works clauses in the contract (despite having considered whether to do so in accordance with section 25(1)(b));
 - (b) social public works clauses are not included in the contract (despite having taken all reasonable steps in accordance with section 25(1)(c)(i));
 - (c) there is no process in place for ensuring that obligations in social public works clauses are implemented (despite having taken all reasonable steps in accordance with section 25(1)(c)(ii));
 - (d) there is no process in place for ensuring that obligations in social public works clauses are implemented where the contract is subcontracted (despite having taken all reasonable steps in accordance with section 28(2)).
- (2) A statement made under subsection (1) must be made as soon as reasonably practicable and give the Welsh Ministers' reasons.

Social public workforce clauses and code of practice on outsourcing public services

32 Public services outsourcing and workforce code

- (1) For the purposes of maintaining or improving the quality of public services or other functions outsourced by contracting authorities, the Welsh Ministers must prepare and publish a code of practice (the "public services outsourcing and workforce code") about employment and pensions matters related to outsourcing services contracts.
- (2) The Welsh Ministers may revise the code and must publish the revised code.
- (3) In preparing the code or any revision the Welsh Ministers must consult such other persons as they consider appropriate.
- (4) The Welsh Ministers must lay a copy of the code and any revision before the Senedd.

33 Social public workforce clauses in outsourcing services contracts

The public services outsourcing and workforce code must include model contract clauses ("social public workforce clauses"), which in particular—

- (a) are designed to ensure that members of staff employed by contracting authorities in providing services, or undertaking functions, to be outsourced will, if they wish, become employed by the person providing those services, or undertaking those functions, when they are outsourced ("transferring staff");
- (b) are designed to protect the terms and conditions and pensions arrangements of transferring staff;

- (c) are designed to ensure that the terms and conditions of other members of staff employed by the person providing the services, or undertaking the functions, who are involved in providing those services, or undertaking those functions, are no less favourable overall than those of transferring staff, and that the pensions arrangements of those other members of staff are reasonable;
- (d) make provision supplementary to the matters referred to in paragraphs (a) to (c).

34 Social public workforce clauses in subcontracts

- (1) Subsection (2) applies if a contracting authority intends to include social public workforce clauses in an outsourcing services contract it agrees with an economic operator (a “contractor”) (the authority having considered whether to do so in accordance with section 26(1)(b)).
- (2) The authority must 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 (a “subcontractor”).
- (3) Examples of the reasonable steps that could be taken under subsection (2) include—
- (a) ensuring that social public workforce clauses having the same or substantially the same effect as those in the outsourcing services contract are included in any subcontract—
 - (i) the contractor enters into with a subcontractor, and
 - (ii) the subcontractor enters into with a subsequent contractor (and so on);
 - (b) ensuring that the contracting authority may enforce the obligations in social public workforce clauses under the outsourcing services contract or under a subcontract;
 - (c) requiring the contractor to obtain the contracting authority’s consent before entering into a subcontract, with consent being made conditional upon social public workforce clauses having the same or substantially the same effect as those included in the outsourcing services contract being included in any subcontract;
 - (d) requiring the contractor to inform the contracting authority if it intends to enter into a subcontract which does not include social public workforce clauses having the same or substantially the same effect as those included in the outsourcing services contract;
 - (e) requiring the contractor to monitor the extent any obligations in social public workforce clauses are implemented where the contractor has entered into a subcontract with any other economic operator.

35 Social public workforce clauses: notifying the Welsh Ministers

- (1) A contracting authority must notify the Welsh Ministers if, in relation to an outsourcing services contract—

- (a) the authority does not intend to include social public workforce clauses in the contract (despite having considered whether to do so in accordance with section 26(1)(b));
- (b) social public workforce clauses are not included in the contract (despite the authority having taken all reasonable steps in accordance with section 26(1)(c)(i));
- (c) there is no process in place for ensuring that obligations in social public workforce clauses are implemented (despite the authority having taken all reasonable steps in accordance with section 26(1)(c)(ii));
- (d) there is no process in place for ensuring that obligations in social public workforce clauses are implemented where the contract is subcontracted (despite the authority having taken all reasonable steps in accordance with section 34(2)).

(2) A notification under subsection (1) must be made as soon as reasonably practicable and must give the authority's reasons.

36 Social public workforce clauses: Welsh Ministers' response

- (1) Where the Welsh Ministers receive a notification under section 35(1), they must—
 - (a) publish a summary of the notification, and
 - (b) consider whether they are satisfied with the reasons given in the notification.
- (2) In considering whether they are satisfied with the reasons, the Welsh Ministers may—
 - (a) consult the contracting authority;
 - (b) by notice require the authority to provide any documents or other information as the Welsh Ministers may require for the purposes of subsection (1) in such form or manner as may be specified in the notice;
 - (c) provide the SPC procurement subgroup with a copy of the notification under section 35(1) and any documents or other information received under paragraph (b);
 - (d) consult the SPC procurement subgroup.
- (3) If, following consideration under subsection (1), the Welsh Ministers are satisfied, they must publish a summary of their reasons for being satisfied.
- (4) If, following consideration under subsection (1), the Welsh Ministers are not satisfied, they may direct the contracting authority to take all reasonable steps to—
 - (a) include social public workforce clauses in the outsourcing services contract,
 - (b) put processes in place for ensuring that obligations in social public workforce clauses are implemented, or
 - (c) put processes in place for ensuring that obligations in social public workforce clauses are implemented where the contract is subcontracted.
- (5) Where the Welsh Ministers give a direction under subsection (4), they must—

- (a) inform the SPC procurement subgroup that they have given the direction, and
- (b) publish the direction.

(6) Where the Welsh Ministers do not give a direction under subsection (4) despite not being satisfied, they must –

- (a) inform the SPC public procurement subgroup that they have not given a direction, and
- (b) publish a summary of –
 - (i) their reasons for not being satisfied, and
 - (ii) their reasons for not giving a direction despite not being satisfied.

(7) The Welsh Ministers must take any action taken under subsections (2)(a) or (b) as soon as reasonably practicable.

(8) A contracting authority must provide any documents or other information it is required to provide under subsection (2)(b) as soon as reasonably practicable.

(9) Nothing in this section requires the Welsh Ministers to publish information which, following consultation with the appropriate contracting authority, the Welsh Ministers consider would be exempt from disclosure were it to be subject to a request for information under the Freedom of Information Act 2000 (c. 36).

37 Social public workforce clauses: Welsh Ministers' contracts

(1) The Welsh Ministers must publish a statement if, in relation to an outsourcing services contract –

- (a) they do not intend to include social public workforce clauses in the contract (despite having considered whether to do so in accordance with section 26(1)(b));
- (b) social public workforce clauses are not included in the contract (despite having taken all reasonable steps in accordance with section 26(1)(c)(i));
- (c) there is no process in place for ensuring that obligations in social public workforce clauses are implemented (despite having taken all reasonable steps in accordance with section 26(1)(c)(ii));
- (d) there is no process in place for ensuring that obligations in social public workforce clauses are implemented where the contract is subcontracted (despite having taken all reasonable steps in accordance with section 34(2)).

(2) A statement under subsection (1) must be made as soon as reasonably practicable and give the Welsh Ministers' reasons.

Procurement strategies

38 Procurement strategy

(1) A contracting authority must prepare a strategy (a "procurement strategy") setting out how the authority intends to carry out public procurement.

(2) A procurement strategy must, in particular –

- (a) state how the authority intends to ensure that it will carry out public procurement in a socially responsible way in accordance with section 24(1);

- (b) state how the authority intends to take all reasonable steps to meet its socially responsible procurement objectives when it carries out public procurement in relation to any prescribed contract;
- (c) state how the authority intends to make payments due under a contract promptly and, unless this is not reasonably practicable, no later than 30 days after an invoice (or similar claim) is submitted.
- (3) The Welsh Ministers may by regulations amend subsection (2) –
- (a) to specify other matters which procurement strategies must address;
- (b) to reduce the number of days mentioned in subsection (2)(c).
- (4) A contracting authority must –
- (a) review its procurement strategy each financial year,
- (b) make any revisions that the authority considers appropriate from time to time, and
- (c) publish the strategy, and any revision, as soon as reasonably practicable after it has been prepared or revised.
- (5) Two or more contracting authorities may fulfil their obligations under this section by preparing a joint procurement strategy.

CHAPTER 3

REPORTING AND ACCOUNTABILITY

39 Annual socially responsible procurement reports

- (1) A contracting authority that has awarded any prescribed contracts during a financial year must prepare and publish an annual report on its public procurement as soon as reasonably practicable after the end of that year.
- (2) The report must include –
- (a) a summary of the public procurement exercises during the year that led to the award of a prescribed contract or were intended to lead to the award of such a contract;
- (b) a review of the extent to which all reasonable steps were taken in those public procurement exercises to meet the authority's socially responsible procurement objectives;
- (c) in so far as the authority considers that further steps could reasonably be taken in future public procurement exercises to meet its socially responsible procurement objectives, a statement of how it intends to take those steps;
- (d) a summary of the public procurement the authority expects to carry out in the next two financial years;
- (e) other information as may be specified by regulations made by the Welsh Ministers.
- (3) Information specified under subsection (2)(e) may include information intended to facilitate an assessment by the Welsh Ministers of the extent to which –

- 5
- (a) a contracting authority meeting its socially responsible procurement objectives contributes to the achievement of the well-being goals;
 - (b) a contracting authority's public procurement, generally, contributes to the achievement of the well-being goals, for example by –
 - (i) benefitting the economy of its area, including through the award of contracts to small and medium sized enterprises;
 - (ii) taking environmental considerations into account;
 - (iii) taking (other) social considerations into account.

40 **Contracts register**

- 10
- (1) A contracting authority must create, maintain and publish a contracts register.
 - (2) A contracts register is a register of public contracts entered into by the contracting authority that are of a description prescribed by the Welsh Ministers by regulations ("registrable contracts").
 - (3) In relation to each registrable contract, a contracts register must contain the following information –

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 - (a) the date of award of the contract;
 - (b) the name of the contractor;
 - (c) the address of the contractor's principal place of business;
 - (d) the subject matter;
 - (e) the estimated value;
 - (f) the start date;
 - (g) the end date provided for in the contract (disregarding any option to extend the contract) or, where there is no date specified, a description of the circumstances in which the contract will end;
 - (h) the duration of any period for which the contract can be extended.
 - (4) But an authority may withhold from publication an entry, or part of an entry, in the register if it considers that publishing it would –

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 - (a) impede enforcement of the law or otherwise be contrary to the public interest,
 - (b) prejudice the commercial interests of any person,
 - (c) prejudice fair competition between economic operators, or
 - (d) disclose a residential address (in the case of information referred to in subsection (3)(c)).
 - (5) An authority may delete an entry in its contracts register only after the contract to which it relates has expired or been terminated.

41 **Procurement investigations**

- 30
- (1) The Welsh Ministers may investigate how a contracting authority carries out public procurement.

- (2) An investigation may relate to a specific public procurement exercise carried out by a contracting authority or to its public procurement activities more generally.
- (3) The Welsh Ministers may, by notice, require a contracting authority to provide such documents or other information as the Welsh Ministers may require for the purposes of an investigation under this section, in such form or manner as may be specified in the notice.
- (4) A contracting authority must –
- (a) provide reasonable assistance to the Welsh Ministers in relation to an investigation;
 - (b) comply with a notice under subsection (3) as soon as reasonably practicable.
- (5) After completing the investigation, the Welsh Ministers may –
- (a) make recommendations to the contracting authority;
 - (b) publish a report of the results of the investigation;
 - (c) lay a copy of any report published before the Senedd.

42 Welsh Ministers' annual report on public procurement

- (1) As soon as reasonably practicable after the end of a financial year, the Welsh Ministers must prepare a report on public procurement in Wales that year.
- (2) The report must, in particular, include information about –
- (a) the annual procurement reports published under section 39;
 - (b) the results of any investigations under section 41.
- (3) The Welsh Ministers must publish the report and lay a copy of it before the Senedd.

CHAPTER 4

GENERAL

43 Guidance

- (1) The Welsh Ministers may issue guidance about the operation of this Part.
- (2) Guidance may, in particular, make provision about –
- (a) meeting the requirement in section 24(1) to carry out public procurement in a socially responsible way;
 - (b) setting socially responsible procurement objectives;
 - (c) taking all reasonable steps to meet socially responsible procurement objectives;
 - (d) social public works clauses;
 - (e) the public services outsourcing and workforce code;
 - (f) social public workforce clauses;
 - (g) consultation during the preparation of a procurement strategy;
 - (h) the form and content of procurement strategies and annual procurement reports;

- (i) the process by which a contracting authority approves its procurement strategy;
 - (j) joint procurement strategies.
- (3) A contracting authority must have regard to relevant guidance published by the Welsh Ministers.
- 5 (4) Before issuing guidance under this Part, the Welsh Ministers must consult –
- (a) the SPC;
 - (b) such other persons as they consider appropriate.

44 Regulations

- 10 (1) A power to make regulations under this Part –
- (a) is exercisable by statutory instrument;
 - (b) includes the power to make different provision for different purposes;
 - (c) includes the power to make incidental, supplementary, consequential, transitional, transitory or saving provision.
- 15 (2) A statutory instrument containing regulations made under section 22(4), 24(8)(c) or 25(3) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Senedd.
- (3) Any other statutory instrument containing regulations made under this Part is subject to annulment in pursuance of a resolution of the Senedd.

45 Interpretation of Part 3

- 20 (1) In this Part –

“the Concession Contracts Regulations” (*“y Rheoliadau Contractau Consesiwn”*) means the Concession Contracts Regulations 2016 (S.I. 2016/273);

“contracting authority” (*“awdurdod contractio”*) has the meaning given in section 22;

25 “economic operator” (*“gweithredwr economaidd”*) means any person who offers the execution of works, the supply of products or the provision of services on the market;

30 “framework agreement” (*“cytundeb fframwaith”*) means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the main terms governing public contracts (call-off contracts) to be awarded during a given period, in particular with regard to pricing the things envisaged to be procured and, where appropriate, their quantity;

“outsourcing services contract” (*“contract allanoli gwasanaethau”*) has the meaning given in section 26(2);

35 “prescribed contract” (*“contract rhagnodedig”*) has the meaning given in section 24(8);

“the Public Contracts Regulations” (*“y Rheoliadau Contractau Cyhoeddus”*) means the Public Contracts Regulations 2015 (S.I. 2015/102);

“public procurement” (*“caffael cyhoeddus”*) has the meaning given in section 23;

“the public services outsourcing and workforce code” (*“y cod allanoli gwasanaethau cyhoeddus a’r gweithlu”*) has the meaning given in section 32(1);

“public works contract” (*“contract gweithiau cyhoeddus”*) has the meaning given by regulation 2(1) of the Public Contracts Regulations;

5 “social public workforce clauses” (*“cymalau gweithlu cyhoeddus cymdeithasol”*) has the meaning given in section 33;

“social public works clauses” (*“cymalau gweithiau cyhoeddus cymdeithasol”*) has the meaning given in section 27;

10 “the Utilities Contracts Regulations” (*“y Rheoliadau Contractau Cyfleustodau”*) means the Utilities Contracts Regulations 2016 (S.I. 2016/274);

“voluntary organisations” (*“sefydliadau gwirfoddol”*) has the same meaning as “relevant voluntary organisations” within the meaning of section 74(2) of the Government of Wales Act 2006 (c. 32);

15 “works” (*“gweithiau”*) has the meaning given by paragraph 2 of regulation 2(1) of the Public Contracts Regulations;

“works concession contract” (*“contract consesiwn gweithiau”*) has the meaning given by regulations 2(1) and 3(2) of the Concession Contracts Regulations;

“works contract” (*“contract gweithiau”*) has the meaning given by regulation 2(1) of the Utilities Contracts Regulations.

20 (2) For the purposes of this Part, the estimated value of a contract is to be determined in accordance with regulation 6(1) of the Public Contracts Regulations.

PART 4

FINAL PROVISIONS

46 General interpretation

25 In this Act—

“financial year” (*“blwyddyn ariannol”*) means—

- (a) in relation to a public body other than a Local Health Board or NHS trust, the period of 12 months ending with 31 March;
- 30 (b) in relation to a Local Health Board, an accounting year within the meaning given by the order made under section 11 of the National Health Service (Wales) Act 2006 (c. 42) establishing the Board;
- (c) in relation to an NHS trust, an accounting year within the meaning given by the order made under section 18 of that Act establishing the trust;

“the Senedd” (*“y Senedd”*) means Senedd Cymru;

35 “SPC” (*“CPG”*) means the Social Partnership Council established by section 1;

“trade union” (*“undeb llafur”*) has the meaning given by section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) (and “recognised” (*“cydnabyddedig”*) in relation to a trade union has the meaning given by section 178(3) of that Act);

“the WFGA 2015” (“DLICD 2015”) means the Well-being of Future Generations (Wales) Act 2015 (anaw 2).

47 Minor amendment of the WFGA 2015

In section 9(6) of the WFGA 2015 (publication of public body’s revised well-being objectives), for “(3) or (4)” substitute “(4) or (5)”.

48 Coming into force

- (1) This Act comes into force on such day as the Welsh Ministers may by order appoint; except for this section, which comes into force on the day after the day this Act receives Royal Assent.
- (2) An order under subsection (1) may appoint different days for different purposes.
- (3) The power of the Welsh Ministers to make an order under subsection (1) is exercisable by statutory instrument.

49 Short title

The short title of this Act is the Social Partnership and Public Procurement (Wales) Act 2023.

SCHEDULE 1

(as introduced by section 22)

CONTRACTING AUTHORITIES

- 1 The Senedd Commission.
- 5 2 A person listed as a “public body” in section 6(1) of the WFGA 2015.
- 3 The Welsh Language Commissioner.
- 4 The Future Generations Commissioner for Wales.
- 5 The Children’s Commissioner for Wales.
- 6 The Commissioner for Older People in Wales.
- 10 7 Social Care Wales.
- 8 The Welsh Ambulance Services NHS Trust.
- 9 Digital Health and Care Wales.
- 10 The Welsh Revenue Authority.
- 11 Transport for Wales.
- 15 12 The Royal Commission on the Ancient and Historical Monuments of Wales.
- 13 Her Majesty’s Chief Inspector of Education and Training in Wales.
- 14 Meat Promotion Wales.
- 15 Qualifications Wales.
- 16 Health Education and Improvement Wales.
- 20 17 The Education Workforce Council.
- 18 The Local Democracy and Boundary Commission for Wales.

SCHEDULE 2

(as introduced by section 24(4))

SOCIALLY RESPONSIBLE PROCUREMENT OBJECTIVES

- 1 If the socially responsible procurement goals are amended, a contracting authority must
5 review its socially responsible procurement objectives.
- 2 If, on a review under paragraph 1, a contracting authority determines that one or more of
its socially responsible procurement objectives are no longer appropriate, it must revise the
objective or objectives concerned.
- 3 A contracting authority may at any other time review and revise its socially responsible
10 procurement objectives.
- 4 Where a contracting authority revises its socially responsible procurement objectives under
paragraph 2 or 3, it must publish them as soon as reasonably practicable.