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Llywodraeth Cymru
Welsh Government

Jenny Rathbone MS
Chair of the Equality & Social Justice Committee
Welsh Parliament
Cardiff Bay
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19 January 2022

Dear Jenny,

Social Partnership and Public Procurement (Wales) Bill

In my recent letter of December 15 2022 following the General Principles debate on the Social Partnership and Public Procurement (Wales) Bill I undertook to write to you again before we reconvene for our stage 2 deliberations to provide more information in relation to recommendations 3, 11, 12, 13, 15, 22 and 28.

Recommendation 3 asks that we set out terms of reference for the Social Partnership Council (SPC). I have confirmed that work is already under way with social partners through the Social Partnership Forum (SPF) to prepare the ground for the SPC. However, the purpose and functions of the SPC are set out very clearly on the face of the Social Partnership and Public Procurement (SPPP) Bill. It is our intention that other practical matters relating to the operation of the Council that are not specified in the Bill will be set out in its procedures. These procedures will be developed in social partnership and subsequently confirmed with the SPC. I will keep the Committee updated on this work.

In relation to recommendation 11, it is for the Commissioner to determine their priorities to discharge their general duty and powers under Part 3 of the Well-being of Future Generations (Wales) Act 2015. The Commissioner's general duty is to promote the sustainable development principle, in particular to act as a guardian of the ability of future generations to meet their needs and encourage public bodies to take greater account of the long-term impact of the things that they do. The Bill does not place any new duties or obligations on the Commissioner. The Welsh Government Draft Budget proposed a budget of £1,680 for the Future Generation Commission in 2023/24. This is an increase of £171k to its baseline.

On 18 January, I met representatives of the NGO organisations who submitted the briefing note that relates to recommendation 12, which asks that we bring forward an amendment to the Bill regarding the Well-being of Future Generations (Wales) Act 2015 globally

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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.

responsible well-being goal so that global responsibility is explicitly referenced on the face of the Bill. The Welsh Government has not brought forward an amendment to this effect because in our view it is unnecessary. However, I am pleased to say the organisations who have lobbied for this change have welcomed the opportunity to work collaboratively with the Welsh Government to develop the socially responsible procurement statutory guidance provided for by the Bill, and more generally to continue the dialogue on globally responsibility and how we can strengthen Public Bodies' understanding of this. We also discussed the potential the SPC has to provide relevant information and advice to Welsh Ministers in future on how the proposed new social partnership duties and socially responsible procurement duties can help strengthen our efforts in Wales to address issues such as deforestation and ethical global supply chains.

In relation to recommendation 13, I said I would update the Committee once further discussions have been held with the Office for National Statistics (ONS) and the Charity Commission in relation to the potential impacts of bringing these bodies within the scope of the socially responsible procurement duties of the Bill. My officials met Sir Ian Diamond, the UK Chief Statistician and Permanent Secretary at ONS to determine whether making Further Education Institutions, Higher Education Institutions and Registered Social Landlords subject to the socially responsible public procurement duty would impact on their current status as "not for profit institutions serving households" (NPISH). I understand Sir Ian has undertaken to write to confirm the ONS's position which is that they are not able to offer speculative advice on what actions government might take which would trigger a change in the current classification of FE, HE or RSLs as NPISH. Any decision on this matter could only be taken once the Bill becomes law.

The Charity Commission have reviewed the Bill and are satisfied that making charities subject to the socially responsible procurement duties would not negatively impact on their charitable status. However, as a regulator and not a representative body for charities, the Commission cannot provide comment on any issues that may arise for charities in complying with such duties.

In relation to recommendation 22, I said I would provide the Committee with more detailed examples of the types of circumstances that might trigger an investigation under Section 41. Section 41 on procurement investigations is drafted broadly. It provides that Ministers may investigate "how a contracting authority carries out public procurement" and that an investigation may relate to a particular procurement exercise or how a contracting authority carries out its procurement more generally. We also expect that Welsh Ministers will be given powers of investigation as a result of the UK-led procurement Bill, and although these will be in relation to compliance with procurement processes rather than well-being outcomes there may be occasions when matters under investigation may relate to both pieces of legislation.

One circumstance that might give rise to an investigation under section 41 would be if a contracting authority has not included the social public works or workforce clauses within a major construction or outsourcing contract, and has failed to notify the Welsh Ministers of this, and its reasons for not doing so. Another circumstance might be where a contracting authority has failed to publish its procurement objectives, strategy or an annual report without good reason, or if these documents significantly fail to meet expectations set out in statutory guidance. Yet another circumstance might be if a contracting authority has failed to collect and report data required by regulations on annual reports, or if the figures published demonstrate significantly poorer performance than that of other similar organisations.

The evidence that might trigger an investigation under section 41 could come from a number of sources, but the most likely one would be the statutory procurement sub-group of the SPC, through reviews of published annual reports and any other evidence. There will be

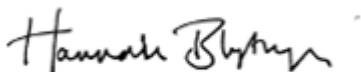
other sources of evidence including the oversight function that we expect to establish to manage compliance with the UK-led procurement Bill. In the Explanatory Memorandum accompanying this Bill we explained that mechanisms for oversight and accountability are an area of interaction between these two Bills. Details on the establishment and operation of these mechanisms are not yet available but we intend these to be stream-lined to avoid duplication, and we will clarify how this will interact with the procurement sub-group of the SPC.

The Explanatory Memorandum also refers to a feedback service that we plan to put in place. The intention is that this will be a mechanism for unsuccessful bidders and other stakeholders to raise concerns about compliance with the new procurement legislative regime in Wales. There is the potential for the procurement sub-group to provide advice arising from feedback relating to the Socially Responsible Procurement duties. If this advice shows evidence of repeated poor compliance it may also result in a procurement investigation. Examples of matters that might be raised with the feedback service and give rise to an investigation might include repeated poor enforcement of prompt payment in supply chains, or repeated failure to ensure that agreed well-being outcomes set out in objectives and contracts are being achieved.

Finally, regarding recommendation 28, which is closely related to recommendation 27 and the action we are taking relates to both, my officials are producing a summary report for the Committee to consider in due course, which will offer a synopsis of discussions at the Shadow Social Partnership Council (SSPC) during the pandemic. This will demonstrate the depth and breadth of discussions at the Council and how the social partnership model operated during this challenging time. In particular, it will highlight how the Welsh Government was able to consider a range of different perspectives and involve social partners as complex decisions were being made.

I trust that the information provided in this letter is useful to the Committee.

Yours sincerely,



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