



Llywodraeth Cymru  
Welsh Government

# **Social Partnership and Public Procurement (Wales) Bill**

## **Explanatory Memorandum**

incorporating the  
Regulatory Impact Assessment  
and Explanatory Notes

**February 2023**

# **Social Partnership and Public Procurement (Wales) Bill**

## **Explanatory Memorandum to Social Partnership and Public Procurement (Wales) Bill**

This Explanatory Memorandum has been prepared by the Social Partnership and Fair Work Directorate of the Welsh Government and is laid before Senedd Cymru. It was originally prepared and laid in accordance with Standing Order 26.6 in June 2022, and a revised Memorandum is now laid in accordance with Standing Order 26.28.

### **Member's Declaration**

In my view the provisions of the Social Partnership and Public Procurement (Wales) Bill introduced by me on the 7<sup>th</sup> June 2022, would be within the legislative competence of Senedd Cymru.

### **Hannah Blythyn MS**

Deputy Minister for Social Partnership  
Member of the Senedd in charge of the Bill

28 February 2023

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## Glossary

Acronym/ Term	Definition
<b>Bipartite</b>	A form of social partnership, where social partners are representatives of employers and recognised trade union(s). Bipartite social partnership can exist at the workplace, sector, regional and national levels.
<b>Fair Work Commission</b>	The Fair Work Commission operated between 2018 and 2019 and comprised a group of individuals from outside the Welsh Government who were appointed by Welsh Ministers to consider how fair work can be promoted and encouraged in Wales.
<b>Fair Work Wales<sup>1</sup> (2019)</b>	Also known as the ‘report of the Fair Work Commission’, the report was published in March 2019 and sets out the conclusions of the Fair Work Commission.
<b>JEC</b>	The Joint Executive Committee of the Workforce Partnership Council. This Committee is accountable to and facilitates the work of the WPC in consultation with representative bodies. The JEC operates in equal partnership amongst its membership and its membership reflects the WPC tripartite social partnership structure, with representation from the Trade Unions, Employers and Welsh Government.
<b>KAS</b>	Knowledge and Analytical Services
<b>Social Partner</b>	A trusted member of ‘social partnership’, being either an employee, employer representative, or trade union. The term “Social Partner” can also be applied to Welsh Government representatives.
<b>Social Partnership</b>	Working to achieve a mutually agreed upon goal, to the benefit of all involved groups.
<b>Socially Responsible Public Procurement</b>	The requirement that people who procure public services think about how they can secure social, economic, environmental and cultural benefits. <sup>2</sup>
<b>SPC</b>	Social Partnership Council.
<b>SSPC</b>	Shadow Social Partnership Council.
<b>Stakeholder</b>	A party interested/invested in the Bill policy.
<b>Sustainable Development</b>	Defined in the WFG Act 2015 to mean the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with

	the sustainable development principle, aimed at achieving the well-being goals (which are set out in section 4 of the WFG Act 2015).
<b>Tripartite</b>	A form of social partnership where social partners involve representatives from employers, workers and Welsh Government. Tripartite social partnership arrangements can exist at the sector, regional and national levels.
<b>UKG PR Bill</b>	UK Government Procurement Bill
<b>WFG Act 2015</b>	Well-being of Future Generations (Wales) Act 2015.
<b>FGC Commissioner</b>	The Future Generations Commissioner for Wales
<b>WCA</b>	Welsh Contracting Authority.
<b>WPC</b>	The Workforce Partnership Council is a tripartite social partnership structure of the trade unions, employers and Welsh Government covering the devolved public services in Wales and a forum for cross-public services workforce matters.

# PART 1 – EXPLANATORY MEMORANDUM

## Chapter 1 Description

1. The Social Partnership and Public Procurement (Wales) Bill provides for a framework to enhance the well-being of the people of Wales by improving public services through social partnership working, promoting fair work and social responsible public procurement.
2. In summary, the Bill makes provision for:
  - the establishment of a Social Partnership Council (SPC);
  - a statutory duty on certain public bodies to seek consensus or compromise with their recognised trade unions (or where there is no recognised trade union) other representatives of their staff, when setting their well-being objectives and delivering on those objectives under section 3(2) of the WFG Act 2015;
  - a statutory duty on Welsh Ministers to consult social partners, employers and worker representatives through the SPC when delivering on their well-being objectives under section 3(2)(b) of the WFG Act 2015;
  - amendment of section 4 of the WFG Act 2015 by substituting ‘fair work’ for ‘decent work’ within the existing “A prosperous Wales” goal;
  - a statutory duty on certain public bodies to consider socially responsible public procurement when carrying out procurement, to set objectives in relation to well-being goals, and to publish a procurement strategy;
  - certain public bodies to carry out contract management duties to ensure that socially responsible outcomes are pursued through supply chains;
  - reporting duties to be imposed on the public bodies and Welsh Ministers in relation to the Social Partnership Duty and Procurement duty;
  - a procurement subgroup of the SPC to provide information and advice to the SPC about the procurement duties imposed on contracting authorities.

## Chapter 2 Legislative Competence

3. Senedd Cymru ("the Senedd") has the legislative competence to make the provisions in the Social Partnership and Public Procurement (Wales) Bill ("the Bill") pursuant to Part 4 of the Government of Wales Act 2006<sup>3</sup> as amended by the Wales Act 2017.



## **Chapter 3 Purpose and intended effect of the legislation**

### **Context**

#### **Social Partnership**

4. The Welsh Government is working in social partnership to build an economy that promotes fair work, equality and economic, social and environmental justice. The Programme for Government 2021-2026 outlines the 10 well-being objectives that the Government is working towards to maximise its contribution to the well-being goals in line with the sustainable development principle.
5. This Bill is intended to complement other legislation, such as the Well-Being of Future Generations (Wales) Act 2015 and the Socio-economic Duty in section 1 of the Equality Act 2010. It specifically closely interacts with and supplements the operation of the WFG Act 2015 with the intended ambition of improving sustainable development through similar social, economic and environmental goals.
6. The WFG Act 2015 defines “sustainable development” to mean the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals. The sustainable development principle requires those bodies which are subject to the Act to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. This Bill is designed to complement and build on the five ways of working that make up the sustainable development principle by introducing the principle of social partnership as an essential way in which Government and public bodies should work.
7. Through social partnership arrangements government, employers and trade unions (or employee representatives if there are no unions present) are brought together in areas of mutual interest, to design and implement better solutions. Social partnership is a way of working which aims to achieve mutually agreed outcomes, to the benefit of all involved groups. As a way of working, it can improve how public bodies set and deliver their well-being objectives, which are designed to maximise the contribution those bodies make to achieving the national well-being goals.
8. Involving employers and workers in joint planning and decision-making processes can strengthen policy making and also contribute to innovative solutions. By engaging the workforce in key decisions, we can support a motivated and committed workforce which is critical to the effective delivery of public services in Wales.

9. The Bill provides an opportunity to bring the principles of social partnership working into the decision-making of public bodies when dealing with matters of a strategic nature, ensuring that the voice of employees and those represented by trade unions can influence strategic decision-making. The Welsh Government has long adopted a collaborative approach to policy and delivery, with social partnership sitting at its heart. Social partnership exists in a variety of forms, where working collaboratively across government, unions and employers, shared objectives are agreed and delivered. Social Partnership brings benefits for workers and employers, with the aim of ensuring that both have equal voice and are able to reach mutually beneficial agreements that are fair and equitable.

## **Fair Work**

10. The Welsh Government established the Fair Work Commission in 2018 to make recommendations to promote and encourage fair work. The Commission's report "*Fair Work Wales*" (2019)<sup>4</sup> included 48 recommendations for promoting fair work. The report recognised there are limits to what the Welsh Government can do under the current devolution settlement and that fair work can contribute to the economic, social, environmental and cultural well-being of Wales. The report also recommended that the actions by public bodies under the WFG Act 2015 incorporates fair work. To that end, this Bill amends the well-being goal of "A Prosperous Wales", replacing 'decent work' with 'fair work'.

## **Procurement**

11. The Welsh Government and Plaid Cymru share an ambition to use our procurement levers in Wales to support sustainable economic growth, to encourage strong local communities and to nurture vibrant local businesses in all parts of Wales. We share an ambition to increase the level of public sector procurement of local products and services and will work together, using the Social Partnership and Public Procurement (Wales) Bill as well as the wider reform of procurement as a means of helping to achieve that ambition.
12. Procurement is one of the most important levers we have to support the more equal, sustainable and prosperous Wales we all want to see over the next few years. It is an essential value-adding activity, helping the Welsh public sector meet Ministerial priorities and deliver effective public services. Socially responsible public procurement is about taking action, when purchasing goods, services and works to improve economic, social, environmental and cultural well-being. It can help us build the modern infrastructure we need to get to net zero, support a green recovery, help promote the Welsh language, and contribute to promoting fair work. In this Bill, socially responsible public procurement is delivered through supply chains and not only with first tier suppliers and contractors. It can help address risks of human rights abuses and help to realise a greater

focus on global responsibility. The Bill includes contract management duties for major construction and outsourcing procurement.

13. Socially responsible public procurement will make well-being a key consideration in public procurement, using the power of the public purse to drive improvements and deliver outcomes beneficial to society.

## **Case for change**

### **Improving the social, economic, cultural and environmental well-being of Wales**

14. Working in social partnership will provide an opportunity to build an economy that promotes fair work, equality and economic, social and environmental justice. Through social partnership, there is an opportunity to involve and collaborate with others to develop the collective action and endeavour needed to solve common problems to create new jobs in the industries of the future, and to transform our economy into one which is greener and fairer.
15. A collaborative social partnership approach would allow us to draw on the combined knowledge, experience and ideas of employers, workers and trade unions in developing solutions to common challenges. As in every other country, the economy in Wales faces a range of structural, strategic and financial challenges and opportunities. We believe social partnership is critical to addressing these difficult and challenging issues and to fulfilling our long-term aspirations for an economy based on the principles of fair work, sustainability and the industries and services of the future.
16. The WFG Act 2015 description of 'A Prosperous Wales' includes reference to decent work, which shares many attributes with fair work, and which formed the basis for the work of the Fair Work Commission. However, in her 2020 annual report<sup>5</sup>, the Future Generations Commissioner noted that public bodies are consistently missing opportunities to reflect decent work in their objectives and their pursuit of the 'A Prosperous Wales' well-being goal.

### **Responding to COVID-19 pandemic through Social Partnership**

17. During the COVID-19 pandemic, social partnership arrangements were utilised successfully both in Wales and around the world to shape national responses. The European Trade Union Institute analysed the responses of various national governments to the pandemic and found that more inclusive policy making, and greater consideration of worker needs, are associated with more extensive use of social partnership working<sup>6</sup>.
18. The Welsh Government has worked with social partners to understand the pressures facing Welsh businesses, workers and devolved public services and how the challenges might be different because of the COVID-19 pandemic and the impact of EU transition. Existing social partnership mechanisms have been largely sector-based, with varying degrees of agility, efficiency and effectiveness in these current social partnership arrangements. These non-statutory social partnership models involve many examples of good progress but also exhibit a lack of consistency in approach.

19. There is a need for national leadership to provide direction and examples of good practice for social partnership working across Wales. A national statutory body would provide such leadership and act as a role model for effective social partnership. There are limitations on how effectively improvements in public service delivery and well-being can be coordinated unless the social partnership approach has a statutory underpinning. We want to promote greater consistency of approach and believe the effectiveness of social partnership arrangements in Wales can be strengthened through legislation.
20. The intention is that the statutory SPC will be visible and transparent in the way it works. Much of the information and advice sent to Welsh Ministers will be published as will meeting minutes and terms of reference for the group. A website for the SPC will also be developed detailing this and providing information about the work of the SPC. All of this information will be accessible for other groups using social partnership to learn from and follow the good practice demonstrated or recommended by the SPC.
21. Moreover, those closest to public service delivery (workers and their employers) are not consistently involved in the decision-making processes to improve public services, therefore their expertise and insights are not being fully utilised. A tripartite body such as the SPC would consider the views of workers and employers from all sectors as employer and worker representatives would be able to engage with Welsh Ministers when discussing issues and decisions that affect the workplace.
22. To encompass these views further, organisational culture changes are needed within public institutions in Wales. Workers and trade unions are often excluded from the strategic planning and decision making by their employers. We can start to resolve this exclusion by putting social partnership on a statutory footing to ensure that workers are more involved in discussion about matters that affect them. Ultimately, success will be dependent on changing values and behaviours which incorporate a national standard for social partnership working.
23. The economic impact of the COVID-19 pandemic, coupled with the ending of the transitional arrangements with the EU on 31 December 2020, presents significant challenges for business. Set in a context of increasing volatility in international trading relationships and the medium and long-term trends in the introduction of disruptive technologies, this presents Welsh businesses with a highly complex situation in which to plan adequately for sustainable growth and secure employment. Against this background, it is important that we have robust and fit-for-purpose structures that can make it easier for government, employers and unions to work together to achieve shared outcomes, with an understanding of opportunities and limitations. It is essential that there is a shared agenda and a focus for engagement and activity.

24. Government, employers and unions all stand to benefit from stable and inclusive economic growth and have a common purpose in supporting a prosperous economy, where businesses and individuals share the benefits. Countries where this is the norm include Austria, Germany, Belgium and Sweden, where institutional structures of social partnership are deeply embedded and the health system and economy are built around a culture of co-operation.

### **Fair Work**

25. Implicit in the Fair Work Wales<sup>7</sup> report was the understanding that the ambition to be a Fair Work nation cannot be achieved by the Welsh Government alone. There is a complicated landscape where public and private sector employers working in social partnership can have an impact, and where levers and responsibilities span the devolved and non-devolved spheres.

26. The Welsh Government believes a better deal for workers is essential to a fairer and more equal Wales. Further action is needed to encourage more jobs that provide fair work and alongside this, we need to equip the workforce with the skills and capabilities needed to access jobs that provide fair work.

27. This agenda spans both devolved and reserved matters, which places constraints upon the actions we in Wales can take. We have agency in relation to the devolved public sector and devolved bodies in Wales. Similarly, we can act to support individuals with skills and employability interventions which leave them better placed to access fair work. We have some influence over the behaviours of those with whom we have a procurement or grant relationship with. We have less influence over the vast majority of private sector employers, although, we can persuade and engage the private sector and deliver business support, economic development and infrastructure interventions to help support, create and attract better quality employment in Wales.

28. 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. The ability of the devolved public bodies to perform that direct and indirect role will be improved by this Bill. This is because the social partnership duty will support public bodies, when setting and delivering on their well-being objectives in the WFG Act 2015, to form constructive relationships with trade unions (or where there is no recognised trade union, other representatives of its staff); the socially responsible public procurement duty will help improve outcomes derived through public procurement; and amending the well-being goals in the WFG Act 2015, to include a reference to fair work, will require public bodies to design

objectives that contribute to fair work, as part of the updated description of A Prosperous Wales” well-being goal

### **Improved Delivery of Public Services**

29. Once again, the COVID 19 pandemic demonstrated how dependent Wales is on effective public services and in turn how mutually dependent they are on constructive and collaborative working relationships between employers and their workforce. The public sector has demonstrated the benefits of a productive and engaged workforce and rose to the challenges of the COVID-19 pandemic, working effectively across sectors to deliver key services.
30. The existing social partnership arrangements have been used effectively to manage a whole range of workforce and service delivery issues, but there is not enough wider representation in decision making in public bodies. Those closest to public service delivery (workers and their employers) are not always being involved in the discussions around decisions to improve public services, their expertise and insights are not always being utilised. Better quality public services take on the views of the workers and employers who deliver these services.
31. The COVID-19 pandemic showed the importance of flexibility to respond to the local and sectoral dimensions of a national challenge. It has highlighted the need for a system of social partnership which incorporates local and sectoral flexibility within a framework that ensures all partners are able to operate in a joined-up and connected way which is embedded across devolved public services at the national, sectoral and local levels.
32. It is important to understand and harness the potential leverage that procurement has to deliver socially responsible outcomes – around £7bn of public money is spent each year by the devolved Welsh public sector. Workers delivering public services under the employment of private and third sector organisations cannot rely solely on agreements made by the Social Partnership Council and are reliant on the effective management of procurement contracts. However, it is important not to overstate the impact that public procurement can have. In some sectors, for example food, the public sector represents only a small proportion of the overall market in Wales.

### **Contribution of Public Procurement to Well-being Outcomes**

33. The contribution that procurement can make to wider policy objectives has been well documented, and this is an area where the government has made good progress. This approach supported a strong collaborative response to the supply chain challenges of the COVID-19 pandemic.
34. However, over a period of time, there have been a number of reviews highlighting improvements that could be made. The Wales Audit Office’s

report, *Public Procurement in Wales*<sup>8</sup> in 2017, was followed by a further review into the work of the National Procurement Service and Value Wales in the same year. The National Assembly for Wales' Public Accounts Committee subsequently undertook an inquiry into public procurement in Wales<sup>9</sup>. The Future Generations Commissioner also published a section 20 review of procurement<sup>10</sup>, the analysis of which identified similar issues.

35. Amongst other things these reviews identified challenges for public bodies in balancing competing procurement priorities, responding to new policy, legislation and technology and recruiting and retaining procurement staff. There is also evidence of increased emphasis on delivering well-being outcomes through procurement, with less focus on financial savings and that more support is needed to embed requirements such as the Code of Practice for Ethical Employment in Supply Chains.
36. Contract management and due diligence in supply chains were also identified as areas where improvement is needed. More is needed to ensure that socially responsible outcomes are being asked for, implemented and monitored throughout supply chains. This means that it can be difficult to effectively monitor, report and take action on organisations in supply chains in Wales when standards are not met. Any uncertainty in contractual arrangements and lack of supply chain due diligence can lead to corner-cutting that can bring about a gradual reduction of social and environmental conditions. In turn, this can lead to very real risks in areas such as environmental protections, ethical employment and modern slavery, particularly in the construction sector.
37. Progress has been made as a result of these reviews; however, legislation provides the opportunity to make greater strides forward, and specifically to provide greater clarity and address competing priorities. There is also a need for improved mechanisms for collecting and reporting data on wellbeing outcomes.

### **Interaction with the UK Procurement Reform Bill**

38. In August 2021 the Welsh Government took a decision to agree to the UK Government legislating on procurement procedures on behalf of Welsh Contracting Authorities in the Procurement Bill currently before Parliament. Assurances were sought and received from the UK Government that this decision would not fetter the Welsh Government's ability to set its own policy priorities for procurement. In the announcement about this decision this Bill was referred to as the mechanism through which these policy priorities will be enshrined in law. There are several areas where the Bill interacts with the Procurement Bill such as in terminology and definitions, in the bodies covered by the Bills, and in establishing mechanisms for oversight and accountability.



## **Background to the Bill**

39. As detailed in chapter 4, the Welsh Government has considered and consulted on proposals for strengthening social partnership arrangements in Wales, an approach to promoting fair work and socially responsible public procurement. This included a White Paper<sup>11</sup> published in November 2019 setting out proposals which formed part of our wider ambitions to drive greater social equality and inclusive economic growth.
40. There was also a consultation<sup>12</sup> on a draft Social Partnership and Public Procurement (Wales) Bill, based on the proposals set out in the White Paper. The response to the draft Bill showed support for the broad principles of many of the draft Bill's provisions, and widespread agreement about key elements of its content.
41. The following pages describe the purpose of the legislation and its intended effect.

### **The Social Partnership Council**

42. Through social partnership arrangements government, employers and trade unions (or employee representatives if there are no unions present) are brought together in areas of mutual interest, to design and implement better solutions. Social partnership can take different forms with different parties working together to achieve a mutually agreed upon goal, to the benefit of all involved groups. There are two main forms of social partnership: bipartite and tripartite:
- in bipartite social partnership, social partners are representatives of employers and recognised trade union(s). Bipartite social partnership can exist at the workplace, sector, regional and national levels;
  - in tripartite social partnership, social partners are representatives of employers, trade unions and Welsh Government. Tripartite social partnership arrangements can exist at the sector, regional and national levels.
43. The Welsh Government has always sought to work in partnership to solve problems and find solutions to the economic, social and other challenges that face Wales. There are many established partnership arrangements in Wales operating at different levels, and whilst all of these partnerships are valued, only some can be considered more formally as social partnership arrangements, with representation from *both* employers and trade unions. This includes social partnership forums recently established in sectors such as social care and retail. This Bill does not propose to replace existing social partnership arrangements but to strengthen their role in the strategic advisory process.
44. Many existing social partnership arrangements in Wales have developed voluntarily and organically. They are not currently underpinned by a

common framework and are not co-ordinated with a view to achieving maximum impact. The number and range of partnerships can put pressure on social partners and can affect their capacity to engage and fully contribute.

### **Purpose and intended effect of the provisions**

45. The Bill makes provision for a tripartite statutory advisory body, to be known as the Social Partnership Council. The Council will be a national cross-sector forum, chaired by the First Minister and with representation from a range of social partners representing employers and workers.
46. The SPC will:
- provide information and advice to Welsh Ministers concerning issues and duties dealt with in other parts of the Bill – the social partnership duties the pursuit of the “A prosperous Wales” well-being goal by public bodies and socially responsible public procurement. This information and advice will be provided to Welsh Ministers with the goal of improving public services and the social, economic, environmental and cultural well-being of Wales;
  - by linking the sustainable development clause of the WFG Act 2015 to this Bill, the SPC will be able to provide the Welsh Ministers with information and advice in relation to the pursuit of the “A Prosperous Wales” goal by Government and public bodies covered subject to the well-being duty in Part 2 of the WFG Act 2015. In effect, this will allow the SPC to discuss matters in relation to public bodies contributing to the achievement of the national well-being goals, including fair work, and the delivery of public services in so far as it relates to the pursuit of the “A Prosperous Wales” goal (including where those services are delivered by a private entity).
47. The reference to the tripartite nature of the SPC is important as this relates to an understanding of social partnership applied at a national Government level, which provides for the participation of three key ‘social partners’, these are employers, workers through their representatives and the Welsh Government, to work co-operatively on issues of mutual interest. In many cases, worker representatives will include members from recognised trade unions.
48. It is this distinction, a focus on inviting the perspectives of employers and worker representatives, (rather than citizens, service users and service providers) from across the public, private and third sectors that makes the SPC different from other national cross-sector partnership structures that already exist.
49. The intended effect of the legislation is to improve public services and well-being in Wales, The establishment of the SPC will also help engender good practice and strengthen the role of social partnership in

matters related to the development and implementation of policy with a view both to improving public services and well-being.. The SPC will provide for the greater involvement and participation of workers and employers in the approach to policy making to drive a more ambitious agenda and support more robust decision-making, to deliver improved outcomes for the people of Wales.

50. It is envisaged that the SPC will provide leadership on issues related to social partnership and will help define, through information and advice to the Welsh Ministers, how social partnership is expected to operate within a devolved Welsh context. It is the intention that much of the SPC's information and advice to Welsh Ministers will be published and therefore be accessible. The SPC will provide a formal channel and explicit terms of engagement that facilitate social partner participation from the public, private and third sectors. It will be a vehicle to involve social partners, through the provision of information and advice, on matters regarding policy development and implementation designed to improve public services and increase well-being, through social partnership, public bodies' pursuit of the 'A Prosperous Wales' goal and socially responsible public procurement.

### **Social Partnership and Sustainable Development**

51. Social partnership is primarily a process, but the principles<sup>13</sup> on which it is built can help deliver behavioural and culture change which in turn can lead to improved outcomes for public services and well-being. Working consistently in social partnership can develop trusted relationships and engender behaviours that promote cooperation, respect, trust, increase participation as well as delivering mutual gains. These values and behaviours have been created as reference points for successful social partnership in Wales and are described as follows:

<b>Social partnership principles</b>	<b>Shared commitment</b>
<b>Cooperation</b>	Success through joint problem solving, compromise and reaching consensus.
<b>Respect</b>	Mutual recognition of legitimate and potentially conflicting interests.
<b>Trust</b>	Relationships based on integrity, authenticity, transparency, openness and selflessness.
<b>Voice and Participation</b>	Proactive and timely information, consultation and engagement.

<b>Mutual Gains</b>	Achieving improvements in public services, social, economic, environmental and cultural well-being and fair work outcomes.
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### **Relevant existing legislation – Well-being of Future Generations (Wales) Act 2015**

52. While the Bill is a standalone piece of legislation, the aim of improving well-being, especially social and economic well-being, is complementary to the WFG Act which makes provision requiring public bodies to do things in pursuit of the economic, social, environmental and cultural well-being of Wales in a way that accords with the sustainable development principle. The WFG Act establishes a set of well-being goals which, collectively, express a vision for the long-term economic, environmental, social and cultural well-being of Wales and provide a coherent framework to guide the improvement of well-being in a sustainable manner. The well-being goals will enable public bodies to understand what they must seek to achieve in order to improve the economic, social environmental and cultural well-being of Wales, for both current and future generations. The main purpose of the well-being goals is to set the context within which public bodies must set well-being objectives. Public bodies will seek to achieve the well-being goals through meeting their well-being objective.

53. Section 3 of that Act provides that each public body must carry out sustainable development, which is defined in the Act as “the process of improving the economic, social, environmental and cultural well-being of Wales by taking action in accordance with the sustainable development principle, aimed at achieving the well-being goals”.

54. In fulfilling the duty to carry out sustainable development, they must set and publish well-being objectives. These are objectives relating to how the public body intends to contribute to the achievement of the well-being goals (see section 4). Public bodies must set well-being objectives which seek to maximise their contribution to the well-being goals. In addition, they must take all reasonable steps, in exercising their functions, to meet their objectives.

55. The well-being goals are:

<b>Goal</b>	<b>Description of the goal</b>
A prosperous Wales	An innovative, productive and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately (including acting on climate change); and which develops a skilled and well-educated population in an

<b>Goal</b>	<b>Description of the goal</b>
	economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work.
A resilient Wales	A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change).
A healthier Wales	A society in which people's physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood.
A more equal Wales	A society that enables people to fulfil their potential no matter what their background or circumstances (including their socio-economic background and circumstances).
A Wales of cohesive communities	Attractive, viable, safe and well-connected communities.
A Wales of vibrant culture and thriving Welsh language	A society that promotes and protects culture, heritage and the Welsh language, and which encourages people to participate in the arts, and sports and recreation.
A globally responsible Wales	A nation which, when doing anything to improve the economic, social, environmental and cultural well-being of Wales, takes account of whether doing such a thing may make a positive contribution to global well-being.

56. Public bodies must take all reasonable steps to meet their well-being objectives, as set under section 3(2) of the Act, in accordance with the sustainable development principle. The WFG Act 2015 details the matters that public bodies must take account of in order to 'act in accordance with the sustainable development principle which is defined acting in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own need.

57. There are 5 things that public bodies need to think about to show that they have applied the sustainable development principle. Following these ways of working will help us work together better, avoid repeating past mistakes and tackle some of the long-term challenges we are facing.

- Long term - When setting and meeting their well-being objectives, public bodies must balance their need to take action to address current issues (the short term) with the need to safeguard their ability to meet long-term needs. This is especially relevant where their short-term actions may have a detrimental effect in the future.
- Prevention - How acting to prevent problems occurring or getting worse may help public bodies meet their objectives.
- Integration - Considering how the public body's well-being objectives may impact upon each of the well-being goals, on their other objectives, or on the objectives of other public bodies.
- Collaboration - This means public bodies working together, either with other bodies or other parts of their own body, in order to assist in meeting their well-being objectives or the well-being objectives of any other public body subject to the provisions of the Act.
- Involvement - The importance of involving people with an interest in achieving the well-being goals, and ensuring that those people reflect the diversity of the area which the body serves.

58. The Bill also complements other statutory duties in Wales, such as the socio-economic-<sup>14</sup>duty, which aims to deliver better outcomes for those who experience socio-economic disadvantage.

59. The existing legislative landscape already provides duties on public bodies to focus on the well-being of the population. In addition to the well-being duty on individual public bodies, some of these bodies have been brought together through Public Services Boards to assess local well-being and prepare a local well-being plan. The Social Partnership Duty is a separate duty that is intended to complement the well-being duty in Part 2 of the WFG Act 2015. This Bill does not change the role and remit of the Future Generations Commissioner for Wales, or duties on the Auditor General for Wales under the WFG Act 2015.

### **Purpose and intended effect of provisions**

60. The purpose of the social partnership duty is to improve the economic, social, cultural and environmental well-being of people in Wales by strengthening the role of social partnership within strategic decision-making. It requires public bodies to seek consensus or compromise with workers, through their recognised trade unions or (where there is no recognised trade union) other representatives of its staff when setting well-being objectives and making decisions of a strategic nature to achieve those objectives under the WFG Act 2015.

61. Involving both employers and workers in key discussions regarding improvements to well-being, recognises and values the unique contribution and expertise brought by those directly engaged in public

service delivery when addressing shared challenges and seeking innovative solutions.

62. The intended effect of these provisions is to promote cooperation, strengthen policy and improve outcomes, through dialogue between social partners, achieved in social partnership.
63. The social partnership duty in the Bill requires specified public bodies to seek consensus or compromise with their recognised trade unions (or where there is no recognised trade union) other representatives of their staff when setting and taking reasonable steps to meet their well-being objectives under section 3(2) of the WFG Act 2015. The social partnership duty applies when public bodies are making decisions of a strategic nature. In discharging the social partnership duty public bodies must take into account guidance published by the Welsh Ministers when considering what is 'reasonable'.
64. The Social Partnership duty on the Welsh Ministers requires them to consult with the SPC when taking steps to meet their well-being objectives under section 3(2)(b) of the WFG Act 2015. The social partnership duty for the Welsh Ministers applies when they are making decisions of a strategic nature.
65. This narrower application of the duty to the WFG Act 2015 (section 3(2)(b)) only is in recognition of the fact that the setting of well-being objectives by the Welsh Ministers takes place immediately following each Senedd election. It would not be appropriate for an incoming Welsh Government with a clear policy mandate from the people of Wales then to be required to seek compromise or consensus on those same matters either as an employer with its own recognised trade unions or with the social partners represented on the SPC.
66. Public bodies will report annually to the SPC detailing how they have complied with the social partnership duty. The reports must be published and submitted to the SPC as soon as reasonably practicable following the end of the financial year. Reports must be agreed with the public body's recognised trade union or (where appropriate) other representatives of its staff or contain a statement explaining why it was not agreed.
67. Welsh Ministers will also be required to produce an annual report setting out how they have complied with the social partnership duty and that report must be submitted to the SPC and laid before the Senedd for scrutiny. The report must be agreed with the SPC or contain a statement explaining why it was not agreed.
68. A key consideration for predicating social partnership on public bodies' obligations under the WFG Act 2015 Act is to contribute to the improvement of the social, economic, environmental and cultural well-being of Wales. The themes captured by each of the WFG Act 2015 well-

being goals are considered to have relevance to the social partnership agenda:

- a. 'A Prosperous Wales' includes reference to '...a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work;' and
- b. 'A More Equal Wales' references '...society that enables people to fulfil their potential no matter what their background or circumstances (including their socio-economic circumstances).'

### **Fair Work**

69. Fair work relates to a state of affairs where the working environment supports and pays attention to the well-being of workers. To this end, the Welsh Government is using its powers, policy levers and influence to promote fair work in Wales. This agenda is reflected in the Welsh Government's current 'Programme for Government' and its pledge to "build an economy based on the principles of fair work".
70. The Welsh Government's fair work agenda is guided by the approach set out in the 'Fair Work Wales<sup>15</sup>' report. This report was published in 2019 and was the product of work undertaken by a Fair Work Commission which was a group of external individuals appointed by Welsh Ministers to provide recommendations on how the Welsh Government can promote fair work.
71. Examples of activities the Welsh Government has undertaken to promote fair work include:
  - establishing a social partnership 'Social Care Fair Work Forum', which has so far provided advice to the Welsh Government on delivering its commitment to pay the real living wage in social care (which the Welsh Government has acted upon);
  - creating a social partnership Retail Forum, which is informing a shared vision for a successful and resilient Welsh retail sector which promotes fair work;
  - funding Cynnal Cymru, as the Living Wage Foundation accreditation partner in Wales, to improve real living wage promotion and accreditation;
  - using levers such as the Economic Contract and the Code of Practice on Ethical Employment in Supply Chains to encourage fair work practices;



- delivering a Health and Safety Forum to share intelligence, concerns and best practice;
- engaging the UK Government to promote Welsh interests on matters relating to reserved employment rights and duties.

### **Purpose and intended effect of the provisions**

72. In relation to fair work, the Bill amends section 4 of the WFG Act 2015 by substituting ‘fair work’ for ‘decent work’ within the existing “A prosperous Wales” goal.
73. The purpose and intended effect of this provision is to secure fair work as part of the description of the “A prosperous Wales” well-being goal, to be pursued by public bodies and Welsh Ministers when carrying out sustainable development under the WFG Act 2015.
74. This will mean that all public bodies subject to the WFG Act 2015 – including the Welsh Ministers – will need to consider fair work in pursuing the “A prosperous Wales” well-being goal. It will enable fair work to be pursued through the process of setting and publishing well-being objectives and reporting on progress against them.
75. This purpose and intended effect aligns with the Fair Work Wales<sup>16</sup> report which recommended that fair work is integrated into the WFG Act 2015.
76. This provision will mean ‘fair work’ takes on its ordinary meaning; and substituting ‘fair work’ for ‘decent work’ will ultimately avoid potential duplication and unhelpful mixed messaging.
77. We will consider producing advice and guidance on how organisations can effectively think about fair work in the context of developing their well-being objectives and the pursuit of the “A Prosperous Wales” goal in particular.

### **Socially Responsible Public Procurement**

78. Around £7bn of public money is spent each year through procurement in Wales. The broad legislative framework in which procurement operates was set by EU law, as amended by the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020. All public procurement above specified levels has fallen under the Public Contracts Regulations 2015, Concession Contracts Regulations 2016 and Utilities Contracts Regulations 2016 in England and Wales, with corresponding legislation in place in Scotland. In this Explanatory Memorandum we will refer to these collectively as Procurement Regulations. They primarily set out the procedural details of how procurements must be carried out from advertisement to award. The framework underpinning the procurement

regulations is being reformed by the UK Government. In August 2021 the Welsh Government announced that it had agreed that the UK Government should make provision for Welsh Contracting Authorities in its Procurement Bill<sup>17</sup>. In broad terms, this will cover the processes underpinning procurement whereas this Bill focuses on policy priorities and outcomes.

79. Procurement in Wales is also covered by the Socio-Economic Duty which is designed to reduce inequalities of outcome caused by socio-economic disadvantage. The duty falls on public bodies and covers procurement insofar as when decisions of a strategic nature include decisions about procurement due regard must be taken to the desirability of exercising those functions in order to reduce inequalities of outcome arising from socio-economic disadvantage.
80. It is a long-established principle that how funding is spent can have a wider impact. Wales has longstanding policy mechanisms that seek to maximise social, economic, environmental and cultural outcomes through procurement. The most important of these has been the Community Benefits toolkit, first published in 2010 and subsequently updated.
81. The Community Benefits approach is a way of incorporating social requirements into procurement in order to benefit the communities in the areas in which contracts are delivered. It has been the Welsh Government's key mechanism for creating jobs and training through procurement. As of end of September 2021, 744 projects worth over £2.7bn had used the approach, retaining 82% of that £2.7bn in Wales as a combination of revenue to businesses and salaries, creating 3,060 job opportunities, 1,604 apprenticeships and 143,719 weeks of training.
82. Fair work has been a policy priority for public procurement for several years, with Wales Procurement Policy Notes (WPPNs) on Tackling Blacklisting in Construction Contracts and on Ethical Employment Practices in Public Sector Supply Chains. These set out how procurement and contract management levers should be used to make sure that unlawful and unfair practices, such as blacklisting of unionised workers, false self-employment and unfair use of umbrella employment schemes and zero hours contracts are not tolerated within public-funded supply chains.
83. In 2017 the Welsh Government published a Code of Practice on Ethical Employment in Supply Chains<sup>18</sup>, which was developed in social partnership. Its twelve commitments include publishing policies and an anti-slavery statement, training staff, carrying out risk assessments on categories of expenditure, making sure unlawful and unethical employment practices are not found within supply chains, and requiring organisations to consider paying all staff above the Real Living Wage. The Code of Practice is voluntary and currently has just over 450 signatories - a small fraction of the organisations that could sign up to the code.

84. Although the Code is voluntary, and signing up is not a condition of receiving a grant or contract, organisations receiving public funding are in practice expected to sign up. In 2019 the Fair Work Commission's report recommended that the content of the Code should be extended to cover its wider definition of Fair Work and should become mandatory for those in receipt of public funding.
85. Strengthening the Foundational Economy in Wales is a cross-government priority and there is a growing commitment to use public sector spending to support home grown businesses and Welsh supply chains. Procurement plays an important role in maximising the amount of business won by Welsh firms to strengthen the economy and sustain and create employment.
86. Considerable focus is also placed on building environmental benefits and protections into procurement processes in Wales, with many organisations using a Sustainability Risk Assessment tool to address issues such as decarbonisation, waste minimisation, climate resilience, and protection of the natural environment.

### **Code of Practice on Workforce Matters (known as the Two-tier Workforce Code)**

87. A revised Two-tier Code of Practice was published in 2014. In adopting the Code, contracting authorities commit to following the principles of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") even when these regulations do not strictly apply, unless there are genuinely exceptional reasons for it not to do so. The Code provides protection for workers when services are outsourced to a third party. Adopting the Code also means that new joiners to a contracted-out service are employed on terms which are no less favourable compared to staff who are transferred.
88. The Code is an important component of the Welsh Government's approach to fair work. It includes procurement guidance, model contract terms and an alternative dispute resolution process, with an expectation that recognised unions are involved in negotiations. Service providers are also expected to extend the requirements to sub-contractors if necessary. Monitoring arrangements are also included, with an expectation that service providers provide the public body with information when requested to allow compliance to be monitored. Contracting authorities are also required to report annually to the Welsh Ministers on the outsourcing contracts they have entered into in the previous year, and whether or not the Code's provisions were applied.

### **Purpose and intended effect of provisions**

89. The aims of the public procurement duties within the Bill are to:

- require contracting authorities to demonstrate their commitment to the Welsh Government’s procurement policy agenda, in order to support economic growth, greater equality, resilient supply-chains and the long-term sustainability of public services;
- provide clarity around the large number of policy expectations placed on procurement activity;
- ensure that socially responsible outcomes linked to the well-being goals, are at the heart of procurement strategies and processes;
- improve the link between procurement processes and the delivery of outcomes through contract management;
- improve transparency by recording metrics and publishing regular reports sharing good practice and areas where improvements are needed; and
- hold contracting authorities to account for ensuring that contract conditions are maintained throughout supply chains, particularly in large construction contracts.

90. The socially responsible public procurement duties cover the full procurement cycle i.e. planning, procurement, contract management, review and compliance. The first set of duties cover how contracting authorities included in the Bill formulate strategy and report on outcomes of their procurement activity.

91. There is an overarching duty to take account of social, economic, environmental and cultural well-being when carrying out all large procurements. This will apply to all contracting authorities, and to all of their procurement. All contracting authorities will also be required to publish Objectives on how their procurement activity will contribute to well-being goals.

92. A further duty to take all reasonable steps to meet these Objectives is included for particular types of procurement, described as “prescribed procurements”. For construction-related procurement this duty applies, as in Scotland, to all procurements over £2m (for this Bill this £2m is inclusive of VAT). This duty will also apply to all outsourcing contracts of any size. For goods and services the threshold above which this duty applies will be set by regulation, but the policy intention is that these will mirror thresholds which derive from the World Trade Organisation’s Government Procurement Agreement (GPA) thresholds and are updated every two years.

93. Contracting authorities will be required to have regard to statutory guidance in undertaking their duties. There are already a number of guides and toolkits available covering many of these areas, and the

issuing of new statutory guidance will provide an opportunity to draw this together, simplify where necessary, and address areas of overlap within existing guidance.

94. The background to the development of socially responsible public procurement and fair work, including the Welsh Government's Code of Practice on Ethical Employment in Supply Chains, is set out in Chapter 3. This Code is in the process of being reviewed, and since it covers fair work in supply chains, those elements which lend themselves to being made mandatory will be embedded within the statutory guidance. The Code will also need to exist on its own so it can still be adopted widely, for example, by businesses and third sector organisations.
95. The Bill also includes a duty to publish a procurement strategy. Many public bodies already publish such a document, but several of the reviews described above find them to be of inconsistent quality. This allows each body to cover its own organisational priorities and processes as well as content set out in the legislation and guidance, which will serve to address concerns about quality and consistency. Contracting authorities will also be required to publish a register of all existing contracts of a nature prescribed in regulations.
96. Contracting authorities that have carried out "prescribed contracts" in the previous year will be required to publish an annual report covering their procurement activity over the previous year and the extent to which they have delivered their Objectives. This will allow achievements to be publicised and good practice shared. This reporting will be integrated as closely as possible into the reporting requirements of the WFG Act 2015. These reports will also include details of planned future procurements. Once these reports have been published the Welsh Government will also publish a summary report, highlighting good practice and areas of weakness, and including other relevant data.
97. The intended effects of these duties are that socially responsible outcomes are given greater prominence in procurement, and considered carefully as part of a more holistic and long-term definition of value for money.

### **Contract management duties**

98. Two specific contract management duties are set out in the Bill. Their inclusion reflects the importance of strengthening the link between requirements included within procurement exercises and due diligence in major construction supply chains and outsourcing contracts. These duties arise with respect to the considering and including of social public works clauses and social public workforce clauses, respectively, within specified contracts. The Welsh Ministers are under a duty to publish model clauses.

99. One of the contract management duties represents a strengthening of the Workforce (two-tier) Code of Practice. Further details on the Code of Practice are included in Section 3 of this document. In summary, it provides that contracting and retendering processes involving staff transferring from public bodies should be carried out to ensure that terms and conditions are protected and pensions remain broadly comparable. It also ensures that new joiners to a transferred-out workforce are employed on terms that are no less favourable.
100. The Bill places a duty on contracting authorities to notify, by exception, the Welsh Ministers of a decision not to include the model contract terms in outsourcing services contracts well in advance of the advertisement of the contract where possible. At present, the notification process only occurs annually in retrospect. Exception notifications will be reviewed by the Welsh Government to assess whether there are reasonable grounds for not including the clauses. External expertise may be sought, for example from the SPC procurement sub-group. Advice will be provided to Welsh Ministers if necessary, in order that a response can be provided to the relevant contracting authority (which may include a direction that it includes the clauses). A summary of the outcome of each of these processes will be reported and published.
101. As part of this work the Code will be reviewed to accommodate these changes, and with the further aim of applying it to all contracting authorities.
102. The other contract management duty does not have a counterpart in existing law or policy but addresses the need for greater due diligence in applying socially responsible contract terms throughout supply chains. The focus of this duty is on the construction sector where risks of poor compliance with social obligations, including those in relation to unfair and unlawful employment practices, can be hard to address throughout long and complex supply chains.
103. The duty will be similar to the social public workforce clause duty referred to above, in that a relevant body must notify the Welsh Ministers, in advance, whenever it does not intend to include socially responsible contract clauses in major contracts. These are defined as construction contracts or call-offs from frameworks with an estimated value of £2m or more (including VAT). Statutory guidance will include details of what should be included within these contract terms.
104. This duty extends to requiring that if a relevant body includes socially responsible public procurement clauses in its major contract, it must also ensure that these contract clauses are extended through supply chains and that a process is put in place to ensure that this happens. One of the main aims of this duty is to pass on requirements through supply chains and to oblige contracting authorities to monitor their extension to their supply chains.

105. Although the intention is to focus on the construction industry and on larger contracts in the first instance, in order to test the application of this duty and to make the best use of resources, Welsh Ministers may extend this duty to other sectors at a later stage.

106. The intended effect of these contract management duties is that socially responsible outcomes built into contracts are delivered, and these obligations are passed on to sub-contractors in supply chains. This will give greater assurance of agreed standards, including for workers and the environment. It was also give bidders more confidence that they and their competitors will be held to contractual obligations.

### **Scrutiny and Challenge**

107. For the public procurement duties in this Bill the primary vehicle for improving performance will be greater transparency through annual publication of reports and data on socially responsible outcomes. Scrutiny will be achieved through the Social Partnership Council and its public procurement sub-group as part of its annual cycle.

108. For the social public work and workforce clause duties a further exception reporting challenge step is included, as described above. Outcomes will be reported to the SPC and its public procurement sub-group and published. In addition, a summary of these reports will also be included within the annual procurement report published by Welsh Ministers.

109. Provision is also made for procurement investigations to be carried out by Welsh Ministers on how a contracting authority carries out public procurement. Investigations 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.

110. One circumstance that might give rise to an investigation 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 without good reason.

111. 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 consideration 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. 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.

112. The Welsh Government intends to develop a feedback service as 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.”

### **Unintended consequences**

113. Most of the public procurement provisions in the Bill are linked to existing policy expectations and are designed to reinforce policy and strengthen existing mechanisms. Some provisions have parallels in law that has been in place successfully for some time, for example the Sustainable Procurement Duty in the Procurement Reform (Scotland) Act 2014. As such, major unintended consequences are not expected.

114. The construction contract management duties are a new approach to dealing with the need for more due diligence in supply chains. Supply chain mapping tools are in use in some parts of the construction industry but no particular model available has been identified to track social outcomes. One possible unintended consequence of this duty might be the development of a number of competing audit and supply chain transparency tools within the construction industry. These could be costly to implement and could raise costs for suppliers, especially Small and Medium Enterprises (SMEs). This consequence must be mitigated by engaging with smaller and medium sized operators within the construction industry as well as the first-tier contractors as new systems are investigated and developed.

115. If care is not taken to ensure that the expectations placed on suppliers as a result of this Bill are relevant and proportionate this could reduce



healthy competition for contracts from certain types of bidders, for example SMEs and organisations that also operate outside of Wales. This must be mitigated by careful consideration of proportionality as statutory and other guidance is developed, and by effective engagement with stakeholders as guidance is developed.

## Evidence

### Social partnership

116. Our proposals to embed social partnership draw on a body of research<sup>1920</sup> that points to the benefits partnership can bring to both employers and employees including improved productivity, performance, innovation, wellbeing and working conditions. Social partnership can have on delivering a more equal society and enhancing social, environmental, cultural and economic well-being. The ambition of the Bill will contribute towards both improving public service delivery and improving individual and collective well-being.

117. Many models of social partnership exist internationally – statutory and non-statutory and governing different elements of the economy and public services. While learning from international experience and good practice, the Welsh Government intends to build on the models of social partnership that have emerged and evolved in Wales since devolution.

### Social partnerships in Wales

118. As has already been set out, there is a well-established social partnership approach in Wales, which has been of particular relevance in times of challenge and uncertainty, both with the Economic Summits in response to the 2008 financial crisis, and more recently in response to COVID-19.

119. The Welsh Government's Shadow Social Partnership Council (SSPC) was established as an initial channel for Welsh Ministers to connect to social partners and wider stakeholders, creating a voluntary partnership to provide for the voice and participation of social partners, in response to the COVID-19 pandemic. The Council advised on guidance, easing of restrictions and priorities at every phase. The SSPC has been disbanded and the Social Partnership Forum (SPF) established to prepare the way for the SPC. The SPF is working collaboratively with social partners to advise on establishing and developing future social partnership arrangements in Wales.

120. Research evidence suggests that in multipartite social partnerships, it is important that non-governmental actors have as much input as governmental actors<sup>21</sup>. All partners must be free and responsible in joint governing and negotiating<sup>22</sup>. Factors for establishing effective social partnerships include stability, institutionalised cooperation, regulated conflict and sustained commitment<sup>23</sup>. The provisions in the Bill to establish a statutory Social Partnership Council with representation from Welsh Ministers and equal representation from employers and trade unions are based on this concept.

121. Social partnership structures in Wales exist at a variety of levels, local, sectoral and national and have continued to evolve over time in response

to changing contexts and demands. A recent review of the former Council for Economic Development (CfED) has led to the introduction of an Economic Ministerial Advisory Board, quarterly Economy Roundtables and biannual economic summits as a replacement, with a view to extending and strengthening engagement with a wide variety of stakeholders. A review of the Workforce Partnership Council (WPC) led to new arrangements being introduced in 2018, with the introduction of a Joint Executive Committee (JEC) and joint secretariat, however as the commitment to strengthen social partnership takes effect across the new Programme for Government, the role and purpose of the WPC is being re-examined, in recognition that this structure now exists as part of an emerging and connected social partnership system in which the relationships and roles between different social partnership arrangements need further investigation. Furthermore, the Shadow Social Partnership Council (SSPC) challenged assumptions around the nature and operation of social partnership structures, highlighting alternative and more agile approaches borne of necessity when responding to the COVID pandemic at pace. Its work highlighted the value of a flexible and adaptive operation that can address the issues in hand and that matter to social partners, with increased frequency and closer involvement and participation. A statutory SPC will build on and further strengthen the role of social partnership across Wales that the SSPC, the SPF and other national structures have already laid the foundations for.

## **Social partnerships in Europe**

122. Research undertaken in July 2020, *Mitigating the COVID-19 effect: Emergency economic policy-making in Central Europe*<sup>24</sup> analyses the economic policy-making in the first phase of the epidemic in five Central European countries, Austria, Czechia, Hungary, Slovakia and Slovenia. The evidence shows that where social partnership is strong, such as in Austria, policy making is more inclusive with a wider range of businesses and unions involved in policy making which led to policies which supported more workers and businesses. This research also shows that social partnership mechanisms do change the way policy is made and leads to better outcomes.

123. Analysis undertaken by the Scottish Government in 2002, identified pertinent examples of good practice, key principles, issues to be addressed and options for consideration in the Scottish context. Key findings show that:

- social partnership continues to be the norm in Western Europe and commonly involves consultation on employment policy. Significantly wider policy co-development occurs only in Austria and Ireland. Social partnership is limited in the UK, where no substantial policy co-development currently takes place;

- key concepts about social partnership are extremely diverse and often nation specific;
- social partnership approaches are particularly appropriate in smaller countries such as Austria, Belgium, and Ireland which tend to be more susceptible to changes in the international economy and more able to bring together the principal political and economic actors;
- most widespread arguments in favour of social partnership are that it reduces conflict and brings economic benefits;
- agreement between partners on the economic benefits of social partnership is the critical factor in determining whether broad policy concertation takes place;
- most successful social partnerships originate as responses to serious national problems like war, inflation, economic stagnation etc. The ability to create win-win scenarios all parties involved benefit from participating is essential to the success and longevity of the social partnership.

### **Sustainable Development and the WFG Act 2015**

124. The Public Accounts Committee published a report 'Delivering for Future Generations: The Story so Far' in March 2021, which found that Public bodies have not done enough to build awareness and understanding amongst their service users of the shift to sustainable development across public services. In their findings, it was considered that Public bodies are yet to take full advantage of the expertise and capacity within the third and private sectors to support their work under the Act. Therefore, public bodies could realise additional benefits of working alongside third and private sector organisations to adopt the principles of the Act when they deliver services for and on behalf of the public service.

125. In the 'Future Generations Report 2020: At a Glance<sup>25</sup>', it was recognised that some goals are less understood, and clarity is lacking on how public bodies are meeting them. This is particularly true of 'A Prosperous Wales', 'A Resilient Wales' and 'A Globally Responsible Wales'. There is a tendency to rely on the title of the goals, neglecting the full extent of their legal definitions. For example, a public body's corporate plan/annual report may state 'This objective is about raising educational attainment and therefore, meets a prosperous Wales', without exploring the connections between the full definition of that goal (for example skills fit for the future, a low carbon society, fair and decent work), other goals and how they could integrate areas of work and maximise their contribution to well-being.

126. The Fair Work Commission in *Fair Work Wales*<sup>26</sup> recognised that fair work is an essential element in sustainable development and defined by section 2 of the Act as ‘the process of improving the economic, social, environmental and cultural well-being of Wales’. Part 1 of the report stressed the need for fair work to be encompassed within a broader set of economic and social objectives, which could be assisted by explicit integration of fair work within the Well-being of Future Generations Act.

## **Fair Work**

127. Evidence shows that fair work as defined by the Fair Work Commission in *Fair Work Wales*<sup>27</sup> can contribute to increased workforce commitment and morale, lower rates of absenteeism, more effective recruitment, lower staff-turnover, improved productivity and other aspects of performance<sup>28</sup>. Similarly, fair work can have a direct bearing upon individual and collective well-being. There is clear evidence which consistently demonstrates that individuals in safe, secure and fairly rewarded work lead happier and healthier lives<sup>29</sup>.

128. The Welsh Ministers recognise that fair work enables individuals to meet their needs, provides a sense of fulfilment and supports individuals to develop and grow. At a societal level, fair work helps to promote cohesion, participation and social and economic justice. For these reasons, fair work is a means to help improve the economic, social, environmental and cultural well-being of Wales.

129. The work of the Fair Work Commission in Wales was informed by a range of research and analysis that is listed in the bibliography of *Fair Work Wales*<sup>30</sup>. The available research literature identifies long-term economic and social benefits of fair work<sup>31</sup>. A model developed by the Scottish Centre for Employment Research demonstrates the role of fair work in driving workplace innovation and productivity, and where the benefits of that work is shared by employers and workers (Fair Work Convention, 2016<sup>32</sup>). With widespread implementation of fair work practices, there is a potential for economic growth that is inclusive (Fair Work Convention, 2016<sup>33</sup>).

130. Evidence also suggests that fair reward benefits productivity levels, showing that productivity is directly reflected by wages; that is, the lower the average wage within a specific region, the lower the productivity performance is within that same region<sup>34</sup> (see Felstead, 2020).

131. Businesses that are able to offer the opportunity for progression can expect benefits such as a broader and richer pool of talent, positive impact on recruitment, retention and reputation, and more efficient resource allocation (Findlay, 2016). Within a public service context, such beneficial outcomes may have a positive impact on the well-being of workers and the improvement of public service delivery.

132. In-work security offers a range of benefits including improved flexibility and adaptability for businesses, impact on tax revenues and less welfare spending for the government, reduced child poverty and attainment and improved health and well-being at a societal level (Findlay, 2016).
133. A flexible workforce benefits the economy by creating opportunities for both employers and workers, without the need for long-term commitments from either group<sup>35</sup>.
134. There is evidence which links fair work and the quality of work with improved and more secure household incomes, living standards and life chances. As such, fair work can have a positive impact on the individual worker and their dependents, including children. A significant proportion of children in child poverty are in households where at least one parent is in work – unfortunately the quality of work is such that it does not lift them out of poverty and this is one of the reasons why fairer work is important.

### **Socially responsible public procurement**

135. There are multiple sources of academic and government research and publications on sustainable and socially responsible public procurement. These include summary reports such as the *UN Procurement Practitioner's Handbook*, the *European Commission's Green Public Procurement*, and *Sustainable Procurement in the United Kingdom public sector*<sup>36</sup>, which focus on the three strands of sustainable development – environmental, economic and social.
136. Within the literature there is a far stronger emphasis on environmental initiatives over social initiatives in sustainable/socially responsible public procurement. This may be because social initiatives are harder to measure and may be less important to suppliers<sup>37</sup>. There is increasing interest in the literature in how socially responsible objectives are maintained throughout supply chains, with most studies confirming that long and complex modern supply chains make this particularly difficult.
137. Some research has demonstrated that socially responsible public procurement can benefit businesses financially by preserving financial performance, through for example avoiding bad press<sup>38</sup>. Other studies have shown that it can promote innovation<sup>39</sup>, and that customer loyalty resulting from ethical procurement practices can be rewarded in longer-term contracts<sup>40</sup>.
138. One study notes that whilst socially responsible public procurement can be more costly, a government-led regulatory framework can implement competition including rules and rewards that lead to outcomes in the common interest of society<sup>41</sup>. This means that companies adhering to the rules are not competitively disadvantaged through higher costs. The authors, Ertl and Schebesta, also note that this regulatory framework would need to facilitate partnership to reduce unnecessary costs and bureaucracy.

139. This regulatory framework is already in place in parts of the UK already. The Public Services (Social Value) Act 2012 requires English contracting authorities to consider how they can secure wider social, economic and environmental benefits when they carry out procurement. In Scotland, the Procurement Reform (Scotland) Act 2014 forms part of the public procurement legislation which governs how Scottish public bodies buy their goods, works and services. The Act requires public bodies to publish procurement strategies to set out how they intend to carry out their regulated procurements and publish Annual Procurement Reports. The Annual Report on Procurement Activity in Scotland summarises the findings from these reports<sup>42</sup>. Results covering the year 2018/2019 included:

- an 8% increase in the number of contract opportunity notices that included community benefit requirements;
- 53% of spend was with businesses based in the 60% most disadvantaged communities;
- 63% of public bodies showed that their regulated procurements were carried out with regard to environmental well-being and climate change;
- 77% of public bodies had used Fair Work criteria in their regulated procurements.

140. A 2015 Review of the Social Value Act<sup>43</sup> by the Cabinet Office found that the Act had a positive impact where it had been taken up, but awareness of the Act was still mixed. 60% of respondents believed that the Act had a positive effect on the local community, 82% thought it had a positive effect on the local economy and 72% felt it had a positive impact on local business. 66% report benefits to both financial investment and environmental improvements, use of local businesses in the supply chain (70%) and disadvantaged groups (75%) and opportunities for training and local employment (83%).

141. The Scottish Government report in particular demonstrates that even when regulations are in place it takes time for public bodies to consistently put new measures in place. The legislation in England and Scotland does not include specific duties relating to compliance and enforcement in relation to contract management. No other examples of legislation on due diligence in public sector contract management have been identified, and so reports on contract management tend to focus on finance and performance risk rather than risks to socially responsible outcomes including fair work.

142. The Welsh Government has pursued socially responsible public procurement through use of policy tools rather than legislation to date. A Sustainable Risk Assessment has been used for several years by

procurement professionals to identify opportunities to address policy issues such as fair work, decarbonisation, circular economy principles, and waste reduction.

143. One example of where this was applied is the Welsh Government's Furniture Framework Agreement. Two Supported Businesses were appointed to this framework, giving opportunity to disadvantaged workers. The framework provided a mechanism for organisations to award contracts to manufacturers who had similar social aims, expertise in remanufacturing, and the circular economy. Call-off contracts under the framework have included the remanufacturing of legacy furniture and participation in a tree planting scheme.

144. Welsh Government also records some of the benefits that Socially Responsible Public procurement has brought through analysis of Community Benefit measurement tools that are submitted to the Welsh Government.



## Chapter 4 Consultation

145. The Welsh Government is committed to working in social partnership. Since the Directorate for Social Partnership and Fair Work was established in Welsh Government our social partners have been involved in shaping the policy for this Bill and the evaluation framework that supports it.
146. The Welsh Government published a Bill and draft Regulatory Impact Appraisal for consultation on 26 February 2021; consultation closed on 23 April. Alongside the main consultation document, Welsh Government hosted eight, independently-facilitated stakeholder workshops on the consultation and a range of briefings for interested parties.
147. In total, 85 responses were received from a range of social partners, other organisations and members of the public. There was substantial support for the provisions within the Bill and widespread agreement about key elements of its content. There was overall agreement from respondents that legislation will strengthen current social partnership arrangements in Wales. A summary report<sup>44</sup> was published.
148. Some key themes emerged from the consultation:
- on social partnership (scope and requirements of the duty) there was strong consensus around the need for the legislation. Respondents called for greater policy alignment and clarity. Some argued there was a need to extend the scope of the Bill to maximise impact and a need also to widen engagement to improve representation;
  - in respect of public bodies there was significant appetite from across a broad range of respondents to increase the list of public bodies subject to the SP duty. The list of bodies in the Bill are defined by reference to the section 6 bodies within the WFG Act 2015 and those bodies will be subject to a review. Ministers have taken the decision to utilise the outcome of that review in order to determine which additional bodies will be subject to the WFG Act 2015 in future (and consequently subject to the SP duty);
  - there was strong support for the principles of fair work and a desire for more detail on the nature of potential fair work objectives. There was no clear consensus on the definition of fair work that should be enshrined in law although high-level and actions-based definitions were preferred by the majority of respondents. There was strong support for full adoption of the definition of fair work given in the Fair Work Commission's report from some respondents;
  - on socially responsible public procurement (bodies in scope, socially responsible public procurement duties and contract

management duties), respondents generally welcomed use of procurement as a key driver of fair work and other strategic objectives. Some respondents advised caution about resource constraints (particularly for SMEs), the need to ensure adequate support to put the new duties into practice and the need for adequate follow-up to improve credibility. Registered Social Landlords, universities and third sector respondents had some concerns about potential implications for charitable status;

- with regard to the Social Partnership Council (its structure, membership and representation), there was general support for the approach outlined. Some respondents questioned the representativeness of the proposed SPC, and argued for a need to ensure diversity and representation on the Council. A number of respondents argued there would need to be wider engagement beyond the SPC membership. Respondents noted the actions of the SPC should not supersede local arrangements. There would also be a need to ensure and maintain an adequate range of skills and experience on the SPC to make it work effectively;
- in relation to supporting improvement and ensuring compliance with the new duties set out in the Bill, the majority of respondents felt the emphasis should be on provision of support to achieve outcomes, with enforcement mechanisms being used only as a last resort. There was support for use of targets, standards and examples of best practise to encourage compliance. The majority of respondents were against any adjudication mechanism at national level through the SPC.

149. In addition to the formal consultation period and the series of workshops with social partners and other stakeholders which helped to inform the consultation document, ongoing dialogue and discussions have been maintained with social partners throughout the development of the Bill. This engagement has often been held in 'real time' and has helped officials to capture and be aware of key concerns and insights from social partners as the work on the Bill has developed.

### **Changes to the draft Bill**

150. Following consultation and further engagement with social partners and other stakeholders a number of policy changes are reflected in the Bill.

### **Social Partnership Council**

- The SPC will provide information and advice to Ministers on public bodies pursuing the "A prosperous Wales" well-being goal in the WFG Act 2015.

- Worker representatives appointed by the First Minister must be nominated by WTUC.
- The requirement for Welsh Ministers to publish all information and advice received from the SPC has been removed. Ministers may choose to publish information or advice in the majority of cases, but there may be occasions where it would not be appropriate to publish information received from the SPC.

### Social Partnership Duty

- All public bodies are required to seek consensus or compromise with their recognised trade unions (or where there is no recognised trade union) with other representatives of their staff, when setting and delivering their well-being objectives under the WFG Act 2015.
- There is a separate Welsh Ministers' duty which has been developed since the consultation following internal consultation with officials in other policy areas.
- The addition of 'sustainable development' in the heading for this part of the Bill.
- Where there is a reference to trade unions, words have been added 'or (where there is no recognised trade union) other representatives of its staff'.

### Fair Work

- A place holder for fair work provisions in the draft Bill has been replaced with an amendment to the "A Prosperous Wales" goal in the WFG Act 2015 to replace "decent work" with "fair work".

### Socially Responsible Public Procurement

- The overarching Socially Responsible Public Procurement duty now makes reference only to national Well-being Goals and not an additional Fair Work Goal.
- Bodies subject to the Socially Responsible Public Procurement Duties do not include HE and FE institutions or Registered Social Landlords. Some other smaller Devolved Welsh Authorities have been included and the lists of bodies included in the Social Public workforce Clause duties (in relation to a revised Two-Tier Workforce Code) is the same as the bodies included in the other socially responsible public procurement duties.
- There is a revised exception reporting process which will require Ministers to publish the outcome of their considerations in the event of a contracting authority providing them with a notification that they do not intend to

include social public works or public workforce clauses within a procurement contract (“exception reporting”).

- It is proposed that the exception reporting process is differentiated from the provisions around procurement investigations, which are treated separately, and more generally into how an organisation carries out public procurement.
- There is a reference to paying suppliers within 30 days of a valid invoice. This has been updated to allow for amendments to this timescale by regulation.
- There is a slight change to the wording in category 6 of the social public works clauses to make provision for climate resilience.
- The £2m threshold for defining construction-related “prescribed procurements” is revised to be inclusive of VAT.

### **Amendments to the Bill following stage 2 scrutiny**

A number of amendments were made to the Bill as a result of stage 2 scrutiny in January 2023. Those amendments were as follows:

- Changes to section 7 to require Welsh Ministers to consult with SPC members before making any revisions to the SPC’s procedures;
- Changes to section 24 to replace references to “socially responsible procurement goals” with references to “well-being goals” to remove any potential ambiguity around the relationship between the socially responsible procurement duty and the well-being goals in the WFG Act 2015;
- Changes to sections 32 and 43 to require Welsh Ministers to consult with relevant stakeholders in developing or subsequently revising respectively the public service outsourcing and workforce code and guidance in relation to Socially Responsible Public Procurement.
- The addition of a new subsection 39(3) to provide further detail about what Welsh Ministers may set out in regulations regarding information that contracting authorities should include in their annual reports. The information which may be set out in regulations includes information on the extent to which their public procurement activities are, through meeting their socially responsible procurement objectives, contributing to the achievement of the well-being goals; benefiting the local economy, for example by reporting the proportion of contracts awarded to SMEs; and how they are taking environmental and other social considerations into account.

- changes to section 40 to require contracting authorities to publish the addresses of the principal place of business for contractors in their contracts registers; and
- a minor technical amendment to section 48 to commence that section on the day after the Act received Royal Assent.

These amendments have been reflected in the Explanatory Notes at Annex 1.

In addition to these amendments, several other changes have been to this Explanatory Memorandum to reflect commitments made by the Deputy Minister for Social Partnership during stages 1 and 2 of Senedd scrutiny.

These include:

- changes to the Evidence section of the EM and the Costs and Benefits section of the RIA to reflect the fact that the Shadow Social Partnership Council has since been disbanded and the Social Partnership Forum established;
- Identifying and detailing the potential need for and associated cost of additional facility time to fulfil the requirements of the Social Partnership Duty
- revisiting and, where appropriate, adjusting, the estimates and assumptions made in the Costs and Benefits section of the RIA. All WG staff costs have been uplifted to reflect the changes to the NICs regime and the pay agreement reached in November 2022. Social partners' staff costs have been uplifted to reflect the ONS data from the Annual Survey of Hours and Earnings (ASHE) published in October 2022;
- clarifying that there will be some familiarisation costs for the Auditor General for Wales and the Future Generations Commissioner for Wales given that public bodies will in future be discharging their social partnership duty alongside their sustainable development and well-being duties;
- additional material in the socially responsible procurement section of the RIA on the costs likely to be incurred by Welsh Government in providing new guidance and training for business;
- further detail and case studies in the socially responsible procurement section of the RIA illustrating the benefits that can be achieved through pursuing socially responsible procurement, and the challenges of quantifying the costs and benefits even on just one project, before considering how to extrapolate a cost-benefit analysis across Wales; and,

- minor revisions to the Post Implementation Review section of the RIA to confirm that costs and benefits will be considered, as far as is possible, as part of the post-implementation review work and that a mid-term assessment outlining financial costs will also be undertaken.

## Chapter 5 Power to make subordinate legislation

151. The Bill contains provisions to make subordinate legislation and issue determinations. Below is a table of subordinate legislation and a table of directions, codes and guidance set out in relation to these:

- (i). the person upon whom, or the body upon which, the power is conferred;
- (ii). the form in which the power is to be exercised;
- (iii). the appropriateness of the delegated power;
- (iv). the applied procedure; that is, whether it is “affirmative”, “negative”, or “no procedure”, together with reasons why it is considered appropriate.

152. The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so. The precise nature of consultation will be decided when the proposals have been formalised.

**Table summary of powers to make subordinate legislation in the provisions of the Social Partnership and Public Procurement (Wales) Bill**

<b>Section</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness of delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
22(4)	Welsh Ministers	Regulations	Power to amend section 22 and Schedule 1 which lists “contracting authorities”. This will allow Ministers to list or delist contracting authorities, who are subject to the socially responsible procurement duty, in future.	Affirmative	These regulations amend primary legislation.
24(8)	Welsh Ministers	Regulations	Power to prescribe contracts which are “prescribed contracts” for the purposes of Part 3 of the Act. This enables Ministers to respond in light of the need to impose duties in respect of certain contracts in future.	Affirmative	These Regulations amend primary legislation.
25(3)	Welsh Ministers	Regulations	Power to amend section 25 (which defines major construction contracts). This enables Ministers to respond to future changes.	Affirmative	These Regulations amend primary legislation.
38(3)	Welsh Ministers	Regulations	Power to amend section 38(2) to specify other matters which procurement strategies should address and to reduce the number of days specified in section 38(2)(c) (the maximum number of days within	Negative	Whilst regulations will amend primary legislation, the specific nature of procurement strategies is an operational matter for



Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			which invoiced should be paid). This will enable Ministers to respond to future changes, including changes in other procurement legislation.		determination by the Welsh Ministers.
39(2)	Welsh Ministers	Regulations	Power by regulations to prescribe other information which socially responsible procurement reports should contain.	Negative	The detailed nature of socially responsible procurement reports is a detailed matter which would ordinarily fall within the executive powers of the Welsh Ministers.

**Table summary of powers to make directions and to issue codes and guidance in the provisions of the Social Partnership and Public Procurement (Wales) Bill**

<b>Section</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness of delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
32	Welsh Ministers	Code	Duty to issue a public services outsourcing and workforce code.	No procedure	This power is connected with issuing a code of practice which covers operational matters connected with outsourcing services contracts. There is a specific duty for the Welsh Ministers in preparing the code to consult such persons as they consider appropriate.
31(2)	Welsh Ministers	Directions	Power to direct contracting authorities if in the event of receiving a notification the Welsh Ministers consider a contracting authority should take specific steps in compliance with the duty (Socially responsible procurement duty: major construction contracts) under section 25.	No procedure	This power is specifically connected with the exercise of duties by contracting authorities and is an operational response which will be required on a case-by-case basis and which may

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					need to be exercised urgently and quickly.
36(4)	Welsh Ministers	Directions	Power to direct contracting authorities if in the event of receiving a notification the Welsh Ministers consider a contracting authority should take specific steps in compliance with the duty (Socially responsible procurement duty: outsourcing services contracts) under section 26.	No procedure	This power is specifically connected with the exercise of duties by contracting authorities and is an operational response which will be required on a case-by-case basis and which may need to be exercised urgently and quickly.

## PART 2 – REGULATORY IMPACT ASSESSMENT

### Chapter 6 Regulatory Impact Assessment (RIA) Summary

153. A Regulatory Impact Assessment has been completed for the Bill and it follows below.

154. There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.

155. The following table presents a summary of the costs and benefits for the Bill as a whole. The table has been designed to present the information required under Standing Order 26.6 (viii) and (ix).

<b><i>Social Partnership and Public Procurement (Wales) Bill</i></b>		
<b>Preferred option:</b> Introduce a Bill that creates a statutory Social Partnership Council, establishes a duty on public bodies to work in social partnership, requires public bodies to consider fair work in pursuing the “A prosperous Wales” well-being goal under the WFG Act 2015 and requires public bodies to undertake socially responsible public procurement.		
<b>Stage:</b> Amendments	<b>Appraisal period:</b> 2023/24 – 2027-28	<b>Price base year:</b> 2022/23
<b>Total Cost</b> Total: £31,552,219 Present value: £28,525,800	<b>Total Benefits</b> Total: £- Present value: £	<b>Net Present Value (NPV):</b> £-28,525,800

#### **Administrative cost**

**Costs:** Transition costs of £298,300 will be incurred by the Welsh Government relating to the development of statutory guidance and the creation of a digital presence amongst other costs.

There will be recurrent costs to the Welsh Government of £3,017,300 during the 5-year appraisal of the Bill for the administering of the Social Partnership Council and social partnership and socially responsible procurement Bill duties as well as opportunity cost for members and producing guidance.

<b>Transitional:</b> £298,300	<b>Recurrent:</b> £3,017,300	<b>Total:</b> £ 3,315,600	<b>PV:</b> £3,004,100
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**Cost-savings:** *No cost savings have been identified.*

<b>Transitional: £-</b>	<b>Recurrent: £-</b>	<b>Total: £-</b>	<b>PV: £-0</b>
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**Net administrative cost: £3,315,600**

### Compliance costs

The public sector will incur transitional costs of £375,119 including for staff time at awareness and training sessions to familiarise themselves with the socially responsible public procurement duty and social partnership duty.

Recurrent costs of total £21,395,125 during the 5-year appraisal of the Bill will fall to public sectors including for compliance with the socially responsible procurement duty, including collating data, objective setting and planning and construction management costs. Recurring construction management costs of £6,466,375 will also fall to the private sector during this 5-year period.

<b>Transitional: £375,119</b>	<b>Recurrent: £27,861,500</b>	<b>Total: £28,236,619</b>	<b>PV: £25,521,700</b>
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### Other costs

*The costs identified in the RIA all fall into the category of either administrative or compliance costs – outlined above.*

<b>Transitional: £=</b>	<b>Recurrent: £=</b>	<b>Total: £=</b>	<b>PV: £</b>
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## Total costs of Bill provisions (£)

Bill provision	Financial Year					Total
	2023-24	2024-25	2025-26	2026-27	2027-28	
Social Partnership Council	46,300	31,600	31,600	36,300	31,600	<b>177,400</b>
Social partnership duty	310,519	267,000	267,000	288,200	267,000	<b>1,399,719</b>
Socially responsible procurement duty	6,233,200	6,105,700	5,886,400	5,861,400	5,861,400	<b>29,948,100</b>
Fair work provision	5,400	5,400	5,400	5,400	5,400	<b>27,000</b>
<b>Total</b>	<b>6,595,419</b>	<b>6,409,700</b>	<b>6,216,300</b>	<b>6,165,400</b>	<b>6,165,400</b>	<b>31,552,219</b>

### Unquantified costs and disbenefits

There are unquantifiable opportunity costs related to potential judicial reviews associated with this Bill. Moreover, there are no environmental or social dis-benefits associated with this Bill.

## Benefits

*The benefits of the Bill, to improve public services and Well-being, go beyond what can be quantified financially, those benefits are:*

- a statutory Social Partnership Council would improve the quality of advice to Welsh Ministers and ultimately help improve public service delivery and well-being in Wales.*
- a statutory SPC would also provide national leadership to strengthen and promote consistency in social partnership working in Wales*
- the introduction of a social partnership duty would strengthen action by public bodies in contributing to Wales' seven well-being goals by giving workers greater involvement in the process of setting and delivery of well-being objectives*
- the introduction of socially responsible public procurement duties would focus the attention of public bodies on achieving socially responsible outcomes through including relevant clauses within contracts that would greatly reduce some of the risks posed by lack of transparency within supply chains*
- requiring public bodies in Wales to consider how fair work can contribute to their objectives regarding the 'A Prosperous Wales' goal, through amending the Well-Being of Future Generations Act to include a reference to fair work and in effect, reinforcing the connection between fair work and individual and collective well-being.*

**Total: £-**

**PV: £-**

## Key evidence, assumptions and uncertainties

*This Regulatory Impact Assessment has been informed by a previous draft Regulatory Impact Assessment, consultation on the Bill, and evidence and recommendations from stage 1 and 2 Senedd scrutiny.*

*Throughout the RIAs, a wide variety of academic, routine statistical and service data has been used in the assessment of benefits and costs.*

## Chapter 7 Options

156. A number of options have been considered for the delivery of each of the policy intentions within this Bill. Extensive stakeholder engagement and a public consultation held between February and April 2021 has informed us of different views to improve public services and promote well-being in Wales.

157. A draft Bill and Regulatory Impact Assessment were also published in February and March 2021.

158. Following the consultations and stakeholder engagement held over the past year, we are proposing to take forward the Social Partnership and Public Procurement (Wales) Bill, the impact of which is set out in this Regulatory Impact Assessment. The comparison between existing costs and any additional costs created by the Bill is set out in the sections which follow.

### Option 1: Business as usual

159. There will be no change to current social partnership arrangements or to the current policy expectations on socially responsible public procurement in Wales. Existing informal and ad-hoc social partnership arrangements would continue.

160. This approach would have the following negative impacts:

- There would be a lack of strategic vision and planning for social partnership.
- We would not be able to capitalise on opportunities to strengthen social partnership and fair work as well as enhance well-being through better strategic planning and clearer accountability.
- Welsh Ministers would not have a cohesive overview of social partnership working across Wales and would be unable to work with social partners to maximise the contribution that effective social partnership might make to their well-being goals for Wales or to the improvement of public services.

161. For these reasons, Welsh Ministers have decided that the status quo is not an option and to realise their policy ambitions legislation is needed which is achieved by the following option:

### Option 2: Introduce a Social Partnership and Public Procurement (Wales) Bill

162. This Bill will strengthen public services and support well-being in Wales by expanding existing powers available to Welsh Ministers and placing new duties on public bodies in Wales. The main Bill provisions that will help achieve this are:

- **Establishing a statutory Social Partnership Council**
  - Through its tripartite national cross-sector membership, the Council will provide information and advice to Welsh Ministers with the aim of achieving improvements in public service delivery and the social, economic, environmental and cultural well-being of Wales in relation to the Bill's provisions of social partnership, public bodies pursuit of the "A



Prosperous Wales” well-being goal under the Well-being of Future Generations Act (Wales) 2015 and socially responsible public procurement

- **Placing a duty on public bodies to work in social partnership** to improve the delivery of public services and well-being of Wales.
  - This will place a duty on certain public bodies to seek consensus or compromise with their recognised trade unions (or other representatives of their staff) in setting well-being objectives and when making strategic decisions about the reasonable steps they should take to meet those objectives.
  - It will place a duty on Welsh Ministers to consult with social partners (employers and trade unions) through the Social Partnership Council in the delivery of their well-being objectives.
- **Ensuring designated public bodies are building socially responsible outcomes**, such as social, economic, environmental and cultural well-being factors into their procurement strategies and processes.
  - This will strengthen the goal of achieving fair work and well-being outcomes as organisations are required to set objectives in these areas and report on outcomes.
- Amending the ‘A Prosperous Wales’ goal description by **substituting ‘fair work’ for ‘decent work’** in section 4 of the Well-Being of Future Generations Act 2015.
  - This will require all of the public bodies subject to the well-being duty in the Well-Being of Future Generations Act (Wales) 2015 (including Welsh Ministers) to consider how fair work can contribute to the pursuit of the “A Prosperous Wales” well-being goal.

## Chapter 8 Costs and Benefits

163. This Regulatory Impact Assessment has been informed by a previous draft Regulatory Impact Assessment published in March 2021. The draft Regulatory Impact Assessment set out a range of options considered for each policy intention and assessed their potential costs and benefits. Having undertaken the draft Regulatory Impact Assessment as well as extensive consultation and stakeholder engagement, this document focuses on the introduction of a Social Partnership and Public Procurement (Wales) Bill and seeks to outline the cost of the legislation.
164. Each option has been assessed using the best available information to the Welsh Government.
165. Welsh Government staff costs have been based on the average gross costs for civil staff pay bands 2022-23 and use a 52-week year and five-day working week. The standard working week is considered 37 hours a week as per the National Agreement 'Green Book'. Average costs for Welsh Government staff includes additional employment costs such as pensions and national insurance contributions.
166. Welsh Ministers salaries included in this document have been provided by the Senedd's Remuneration Board on members' pay and allowances. These figures have been uplifted by 19.9% in this document to account for their employer's pension contribution.
167. For non-civil service staff, the ONS Annual Survey of Hours and Earnings (ASHE) figures have been used as a proxy to calculate the median average hourly gross pay of staff.
168. ONS figures for Wales Chief Executives and Senior Officials and Human resources and Industrial Relations Officers from the 2022 dataset have been used as a proxy in many of these cases as they are deemed to be the most recent and accurate proxy to use in these examples.
169. 30% employment on costs are then added to all ONS proxies to account for additional employment costs such as pensions and national insurance contributions.
170. Figures have been rounded throughout the impact assessment to a level of precision that is considered appropriate for the relevant calculations. In some tables, rows and columns may not sum up to the total column due to this rounding process.
171. All costs and benefits quantified are based on information and data available to the Welsh Government leading up to publication.

## Costs and Benefits of Part 1: The Social Partnership Council

### Introduction

172. This part of the Bill would establish a statutory Social Partnership Council to advise Welsh Ministers on the improvement of public services and the four types of well-being (social, economic, environmental and cultural) in relation to the duties imposed by the Bill and the pursuit of the “A prosperous Wales” goal under the WFG Act 2015. A statutory SPC would strengthen social partnership by enabling Welsh Ministers to establish links to other relevant social partnership structures and promote consistency in the Welsh system by providing a framework of social partnership working that others can follow.

Two options have been identified and explored in relation to the SPC:

### **Option 1: Business as usual - continue with a non-statutory approach to social partnership**

#### Description

173. This option would involve continuing to rely on existing structures to manage the Welsh Government’s social dialogue for the improvement of public services and well-being. These structures were established and operate independently of one another, they are not connected or their contribution to the social partnership and fair work agenda coordinated to maximise their impact. This option assumes that these business as usual structures will continue regardless of the Bill. The SSPC arrangement, as part of the emergency response to the pandemic, has been disbanded.

174. Business as usual structures to manage social dialogue with private sector employers and trade unions will continue where they already exist such, for example the Economic Summit (formally The Council for Economic Development).

175. The Third Sector Partnership Council would continue to be the primary forum through which the Welsh Government engages with the third sector on matters of strategic importance to the sector. The Third Sector Partnership Council does not, however, function as a social partnership forum

176. Social dialogue with public sector employers and trade unions would continue through the Workforce Partnership Council (WPC) and its Joint Executive Committee (JEC).

177. The SSPC has been disbanded. The current Social Partnership Forum has been established to prepare for the statutory Social Partnership Council. Under this option it would be disbanded.

178. There would be no legislative change required under this option.

179. The “Business as usual” option would not take account of the recommendation of the Fair Work Commission to legislate to establish a statutory social partnership mechanism.

### Costs – “Business as usual”

180. There are no additional costs associated with this option. The following section provides a summary of the costs to maintain the current system to enable a comparison to be made of the additional costs (or cost-savings) associated with the preferred option, which we estimate to be £374,500 per annum (rounded to the nearest hundred).

**Table 1:** Summary of costs for Option 1

<b>Summary of costs (£)</b>	
Table 1.1	304,400
Table 1.2	1,300
Table 1.3	6,708
Table 1.4	5,754
Table 1.5	6,400
Table 2	1,400
Table 2.1	48,500
<b>Total</b>	<b>374,462</b>

### **Costs of the Workforce Partnership Council and its Joint Executive Committee**

#### Running costs and research support

181. The Workforce Partnership Council (WPC) is a tripartite social partnership structure of the trade unions, employers and Welsh Government. It is supported by a joint secretariat of five people (one at Grade 6, three at SEO and one HEO). The secretariat team supports both the WPC and SPF, however these staff also spend time working on other aspects of work. They will be spending a Whole Time Equivalent (WTE) of 0.5 for the Grade 7, 3 for the three SEOs and 1 for the HEO on secretariat duties.

182. Their work is funded by the Welsh Government.

183. The Joint Executive Committee (JEC) is accountable to and facilitates the work of the WPC in consultation with representative bodies. The JEC operates in equal partnership and its membership reflects the WPC tripartite social partnership structure, with representation from the Trade Unions, Employers and Welsh Government.

**Table 1.1 – breakdown of costs for joint secretariat**

<b>Grade</b>	<b>Annual staff cost (£)<sup>45</sup></b>	<b>WTE</b>	<b>Cost per annum (£)</b>
Grade 7	105,117	0.5	52,558.50

SEO	66,364	3	199,092
HEO	52,774	1	52,774
<b>TOTAL</b>			<b>304,424.50</b>

184. Rounded to the nearest hundred, the annual cost of administering the WPC and SPF is **£304,400**.

#### Opportunity costs

185. Attending the WPC and the JEC represents an opportunity cost for attendees as detailed by the tables below.

186. The WPC takes place twice a year, whilst the JEC meets six times a year.

187. WPC members undertake a representative role on behalf of their sector that will rely on wider engagement through national sector based structures and networks.

188. The opportunity costs of members consulting with those they represent on items discussed at the WPC through established public, private and third sector networks are estimated as a thirty-minute agenda item on three meetings per year, which equates to one hour and thirty minutes per annum overall.

**Table 1.2:** Opportunity cost of WPC members spending one hour and thirty minutes per annum engaging their sector through their established representative structures

<b>Number and type of participant</b>	<b>Hourly gross wages (£) x participants x hours</b>	<b>Sub-total (£)</b>
Ten senior full time trade union officials	$41^{46} \times 10 \times 1.5$	615
Ten employer representatives (director level)	$24^{47} \times 10 \times 1.5$	360
Employment on-costs (30%)		293
<b>Total (per meeting)</b>		<b>1,268</b>

189. The total opportunity cost per year for WPC members to support meeting preparation and wider engagement is therefore **£1,300** (rounded to the nearest hundred).

**Table 1.3:** Working out the estimated opportunity cost for members of the WPC at each meeting.

<b>Number and type of participant</b>	<b>Hourly gross wages (£) x participants x hours</b>	<b>Sub-total (£)</b>
Ten senior full-time trade union officials	$41^{48} \times 10 \times 2$	820

Ten senior public sector employer representatives (director level)	$41^{49} \times 10 \times 2$	820
Ten senior Welsh Government officials	$41^{50} \times 10 \times 2$	820
Deputy Minister	$60^{51} \times 1 \times 2$	120
Employment on-costs (30%)		774
<b>Total (per meeting)</b>		<b>3,354</b>
<b>Total (annual cost)</b>		<b>6,708</b>

**Table 1.4:** Working out the estimated opportunity cost for members of attending the WPC's joint executive committee (JEC)

<b>Number and type of participant</b>	<b>Hourly gross wages (£) x participants x hours</b>	<b>Sub-total (£)</b>
Three senior full time trade union officials	$41^{52} \times 3 \times 2$	246
Three senior public sector employer representatives (director level)	$41^{53} \times 3 \times 2$	246
Three senior Welsh Government officials	$41^{54} \times 3 \times 2$	246
Employment on-costs (30%)		221
<b>Total (per meeting)</b>		<b>959</b>
<b>Total (annual cost)</b>	$959 \times 6$	<b>5,754</b>

190. Therefore, the total estimated annual opportunity cost of the WPC and its JEC meeting rounded to the nearest hundred is **£12,500** ( $6,708 + 5,754 = 12,436$ ).

#### Costs of implementing the guidance emanating from the current WPC

191. Since its establishment, the WPC has produced a number of guidance documents relating to improving the delivery of public services. Here we provide some illustrative examples of costs incurred by a selection of public bodies in implementing the WPC's Partnership and Managing Change document.

192. Partnership and Managing Change<sup>55</sup> is a Workforce Partnership Council agreement which was originally agreed and published in 2012. It provides an agreed process for public bodies in Wales on how they should consult with trade unions when embarking on any changes or improvements to public services. It goes beyond just consultation on change and encourages and expects early dialogue on ideas and proposals to ensure all matters are considered by all partners.

193. The central requirement of the agreement is that organisations and their managers consult trade unions in advance when embarking on change and improvement. Many public bodies were holding such meetings in advance of

the guidance being issued however the agreement sought to strengthen and extend this as a universal provision based on mutually agreed principles.

194. The estimated opportunity costs of an additional half-hour agenda item at a union-management meeting in a public sector body is calculated below. The calculation is indicative and is limited to the local government and local health boards and the largest two groups of devolved public bodies with significant numbers of staff. Because trade union representatives can be from any grade across an organisation it is difficult to assess costs of their participation. In order to understand the upper limits the likely costs have been equated to a senior HR and industrial relations officer.

**Table 1.5:** Working out the estimated opportunity cost of an extra 30 minutes on the agenda of management union meetings in local government and health bodies

Role of person	Number	Hourly rate (£)	Length of time (hrs)	Sub-total (£)
<i>Employer side</i>				
Corporate manager <sup>56</sup>	3	24	0.5	36
<i>Trade union side</i>				
Lay official <sup>57</sup>	3	14	0.5	21
Sub-total				57
Employment on-costs (30%)				17
<b>TOTAL</b>				<b>74</b>

195. If we assume guidance is discussed at 3 meetings per year held in in 22 local authorities and 7 local health boards then the estimated opportunity cost of discussing major changes at union-management meetings is  $74 \times 3 \times 29 = \text{£}6,400$  to the nearest hundred.

### Reporting costs

196. Reporting costs on the implementation of guidance and agreements of the WPC are met by devolved public bodies.

197. Monitoring is undertaken by the joint secretariat whose staff are responsible for reporting and collating data relating to the implementation of WPC guidance and agreements. The joint secretariat was established with the specific intention of supporting such work. It cannot be considered as an additional opportunity cost because it is a core function of the secretariat. It is already accounted for within the costs of the WPC secretariat referred to above.

## **Costs of the Social Partnership Forum**

### Running costs and research support

198. Since November 2022, a Social Partnership Forum has been established to prepare the way for the statutory Social Partnership Council proposed by the

Bill. It meets every two months. It is supported by a joint secretariat of five people (one at Grade 6, three at SEO and one at HEO) which support both the WPC and SPF as detailed at paragraphs 181-184 and Table 1.1 above. Their work is funded by the Welsh Government.

199. The function of the Social Partnership Forum is to work in Social Partnership on the establishment of the SPC so it is not anticipated the SPF will continue in existence once the SPC is in place.

#### Opportunity costs

200. Attending the SPF represents an opportunity cost for attendees. Under its current schedule the SPF takes place around eight times a year.

201. SPF members undertake a representative role on behalf of their sector that will rely on wider engagement through national sector-based structures and networks.

202. The opportunity costs of members consulting with those they represent on items discussed at the SPF through established public, private and third sector networks are estimated as a thirty minute agenda item on three meetings per year, which equates to one hour and thirty minutes per annum overall.

**Table 2:** Opportunity cost of SPF members spending one hour and thirty minutes per annum engaging their sector through their established representative structures:

Number and type of participant	Hourly gross wages (£) x participants x hours	Sub-total (£)
Nine senior full time trade union officials	$41^{58} \times 9 \times 1.5$	554
Nine employer representatives (director level)	$41^{59} \times 9 \times 1.5$	554
Employment on-costs (30%)		332
<b>Total (per meeting)</b>		<b>1,440</b>

203. Therefore, the total opportunity cost per year for SPF members to support meeting preparation and wider engagement is **£1,400** (rounded to the nearest hundred).

**Table 2.1:** Working out the estimated opportunity cost for members of the SPF at each meeting:

Number and type of participant	Hourly gross wages (£) x participants x hours	Sub-total (£)
Nine senior full time trade union officials	$41^{60} \times 9 \times 2$	738
Nine senior employer representatives (director level)	$41^{61} \times 9 \times 2$	738



Ten senior Welsh Government officials	41 <sup>62</sup> x 9 x 2	738
One Deputy Minister	60 x 1 x 2	120
Employment on-costs (30%)		700
<b>Total (per meeting)</b>		<b>3,034</b>
<b>Total (per year)</b>	<b>3,034 x 15</b>	<b>48,544</b>

204. Therefore, the total estimated annual opportunity cost of the SPF is **£48,500** (rounded to the nearest hundred).

### Benefits

205. This option retains the status quo, consequently any additional benefits are limited.

### **Option 2: Statutory Social Partnership Council (SPC) - establish a statutory approach to social partnership.**

#### Description

206. Under option two the Welsh Ministers would create a statutory Social Partnership Council.

207. The SPC's membership and functions will be distinct and different from those for the former SSPC, which primarily supported the pandemic response and the SPF which has been set up to work in social partnership to prepare for the SPC.

208. The SPC will be a tripartite statutory advisory body, a national cross-sector forum which seeks to provide a channel for the voice and participation of social partners, specifically employers and trade unions, in the development and implementation of government policy. The purpose of the SPC is to provide information and advice to improve public services and increase well-being. Appointments to the SPC will be unremunerated.

209. The SPC will provide information and advice to Welsh Ministers on the social partnership duty, the socially responsible public procurement functions as well as the pursuit of the "A prosperous Wales" well-being goal.

210. The SPC would be supported by a secretariat provided by the Welsh Government and would be able to draw on the wider expertise of Welsh Government to ensure sufficient capacity to prepare advice which is robust, authoritative, costed, appraised for risk and fully assessed for its potential impacts. Costs of the SPC will be met from within Welsh Government budgets; the Council will not have powers either to employ its own staff or to incur any expenditure.

## Costs – Statutory Social Partnership Council

### Transition costs

211. There is already a secretariat team whose core remit is to support the WPC and the SPF. It is not anticipated that the administrative workload in establishing and supporting the new arrangements for a statutory SPC to replace the current SSPC, including any sub-groups would be significantly higher.

212. There may be costs associated with establishing a digital presence for the SPC as noted in the Compliance and Reporting costs section of this document. Options for the development of an online platform will form part of the SPC implementation plan.

213. To support transition, an organisation page on the core GOV.WALES site will be established in the first instance at no cost. The opportunity cost of this would be covered within the operating cost of the joint secretariat.

### Running costs

214. The SPC will be established following relevant provisions coming into force. It is expected to be implemented in the 2023/24 financial year.

### General and Administration

215. The total transition and annual costs for establishing the SPC are estimated to be **£10,000** and **£36,340** respectively. The following paragraphs provide the detail:

**Table 2.2:** Summary of costs for Option 2

<b>Summary of costs (£)</b>	
<b>Transition</b>	
Digital Presence	10,000
<b>Total transitional cost</b>	<b>10,000</b>
<b>Annual</b>	
Table 2.3	9,600
Table 2.4	8,600
Table 2.5	1,400
Tables 2.6 and 2.7	12,000
Table 2.8	4,700 (every three years)
<b>Total annual cost</b>	<b>36,300</b>

216. It is anticipated that meetings will take place three times a year for a duration of two hours each.

**Table 2.3:** Illustrative opportunity costs for members of a two-hour meeting.

Number and type of participant	Hourly gross wages (£) x participants x hours	Sub-total (£)
Nine senior full time trade union officials	$41^{63} \times 9 \times 2$	738
Nine employer representatives (senior manager level)	$41^{64} \times 9 \times 2$	738
Nine Welsh Government representatives (split assumes First Minister, two Welsh Ministers and six senior officials of director/deputy director level)	$100^{65} \times 1 \times 2$	200
	$72^{66} \times 2 \times 2$	288
	$41^{67} \times 6 \times 2$	492
Employment on costs (30%)		739
<b>Total (per meeting)</b>		<b>3,195</b>
<b>Total (per year)</b>	$3,195 \times 3$	<b>9,585</b>

217. Rounded to the nearest hundred, the total opportunity cost for SPC members per year is **£9,600**.

#### Sub-groups

218. The SPC would have the power to form sub-groups to assist with its work and will be required by the Bill to establish a public procurement sub-group to support the implementation of the Socially Responsible Public Procurement Duties.

219. It is assumed for this purpose sub-groups would meet three times a year and there would be three of them.

**Table 2.4:** Working out the estimated opportunity costs for running a sub group

Number and type of participant	Hourly gross wages (£) x participants x hours	Sub-total (£)
Nine senior officials per sub-group	$41^{68} \times 9 \times 2$	738
Employment on costs (30%)		221
<b>Total (per sub-group)</b>		<b>959</b>

220. Therefore the estimated opportunity cost of SPC sub-groups is  $959 \times 3 \times 3 =$  **£8,600** (rounded to the nearest hundred).

#### Premises

221. There are likely no extra costs associated with this option. The Welsh Government estate and that of public sector are deemed to be sufficient at present.

222. As detailed later in this section, there will be costs of up to £10,000 for creating a digital presence for the SPC.

223. We do not anticipate additional IT costs beyond creating a digital presence, as these are already met within existing Welsh Government technology.

### Staffing

224. We anticipate that the current staff compliment would be sufficient to manage the secretariat function under option 2 as part of the wider Social Partnership and Fair Work Directorate, therefore this is not an additional cost. The staffing costs for the Joint Secretariat are an estimated **£304,400** a year rounded to the nearest hundred (see paragraphs 181 – 184 and table 1.1 above).

### SPC members' opportunity costs to support meeting preparation and wider engagement

225. SPC members undertake a representative role on behalf of their sector that will rely on wider engagement through national sector-based structures and networks.

226. It is not anticipated that social partners would require additional staff, beyond that already committed to existing arrangements, in order to respond to the new arrangements imposed by the Bill. The policy intention is to streamline existing mechanisms wherever possible and to reduce the burden on the opportunity costs partners currently pay in terms of their staff attending meetings, therefore it is expected that existing staffing arrangements will be sufficient for social partners to adhere to the Bill's provisions.

227. The opportunity costs of members consulting with those they represent on items discussed at the SPC through established public, private and third sector networks are estimated as a thirty-minute agenda item on three meetings per year, which equates to one hour and thirty minutes per annum overall.

**Table 2.5:** Opportunity cost of SPC members spending one hour and thirty minutes per annum engaging their sector through their established representative structures

<b>Number and type of participant</b>	<b>Hourly gross wages (£) x participants x hours</b>	<b>Sub-total (£)</b>
Nine senior full time trade union officials	41 <sup>69</sup> x 9 x 1.5	554
Nine employer representatives (senior manager level)	41 <sup>70</sup> x 9 x 1.5	554
Employment on-costs (30%)		332

<b>Total (per meeting)</b>	<b>1,440</b>
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228. Therefore, the total opportunity cost per year for SPC members to support meeting preparation and wider engagement is **£1,400** (rounded to the nearest hundred).

### Producing advice

229. The cost of producing advice or collating information for Welsh Ministers which flows from the SPC would be met from Welsh Government departmental budgets.

230. Each item of advice to Ministers would itself be costed, as part of a robust procedure which mirrors existing civil service processes for assessing policy proposals.

231. There would be opportunity costs for producing this advice for Ministers. For illustrative purposes we provide estimated costs for advice on a simple issue and advice on a complicated issue.

**Table 2.6:** Working out the estimated opportunity cost of producing advice to Ministers on a straightforward matter

<b>Member of staff and grade</b>	<b>Annual staff cost <sup>71</sup> (£)</b>	<b>Daily rate (£) (divided by 220)</b>	<b>Days</b>	<b>Sub-total (£)</b>
Deputy Director – sign off	120,174	546	x 0.5	273
Legal services – Grade 7	86,731	394	x 1	394
Policy lead – SEO	66,364	302	x 5	1,510
<b>TOTAL</b>				<b>2,177</b>

**Table 2.7:** Working out the estimated opportunity cost of producing advice to Ministers on a complex matter

<b>Member of staff and grade</b>	<b>Annual staff cost <sup>72</sup> (£)</b>	<b>Daily rate (£) (divided by 220)</b>	<b>Days</b>	<b>Sub-total (£)</b>
Deputy Director – sign off	120,174	546	1	546
One policy lead – Grade 6	105,117	478	10	4,780
Legal services – Grade 7	86,731	394	2	788
Policy lead – SEO	66,364	302	5	1,510
<b>TOTAL</b>				<b>7,624</b>

232. It is assumed for this purpose that the SPC would produce one item of advice to Ministers on a complex matter in a year and two items on more straightforward matters. This assumption is based on the fact that the SPC will meet 3 times a year, subgroups are expected to meet 3 times a year and there are expected to be 3 of them. Therefore, there will be 12 SPC related meetings a year and we have assumed a quarter of these meetings will result in advice needing to be provided to Welsh Ministers.

233. Therefore, the estimated annual opportunity cost of producing such advice would be  $(2,177 \times 2) + 7,624 = \text{£}12,000$  (to the nearest hundred).

#### Ministerial guidance costs

234. The cost of producing guidance issued by Welsh Ministers which flows from advice received from the SPC would be met from Welsh Government departmental budgets.

235. Costs associated with the development and implementation of guidance relating to the social partnership, fair work and socially responsible public procurement are detailed within the RIA under the relevant sections.

#### Compliance and Reporting costs

236. It is recommended that the SPC should have a strong digital presence including clearly organised and searchable repositories of:

- Annual social partnership reports from public bodies.
- Annual reports from public bodies concerning the socially responsible public procurement duty.

237. Welsh Ministers commit to providing ongoing encouragement to public bodies in reaching compliance with the duties in the Bill, including through organising regular events, activities and campaigns in collaboration with social partners. The SPC online presence would provide a central focal point for engagement activities and would provide information about social partnership training and guidance, communications materials and events, as well as information about regional, sectoral and cross-sectoral social partnership structures, in addition to information about the SPC itself.

238. Implementation of guidance would be subject to routine monitoring where this is defined within the relevant duties and any guidance and exception reports would be prepared by the SPC's secretariat whose costs are described above.

239. Costs for the SPC digital presence will vary according to the functionality of the site.

240. An organisation page on the core GOV.WALES site would not involve any cost as it would build upon an existing platform. Publication, reports and documents can be stored on these pages and limited branding could be used.

241. A more advanced platform, such as a standalone site on the GOV.WALES platform would incur additional costs. Additional staff resources would be needed to develop the site and to continually monitor and update the platform, likely in the form of a HEO. We estimate this cost for developing and maintaining a standalone site on the GOV.WALES platform to be around a one-off cost of up to £10,000, with this cost expected to be incurred in 2023-24. Any future further developments to the site would be costed separately.

### Monitoring annual reports

242. The monitoring and reporting costs for the social partnership and annual procurement reports are estimated in their relevant sections of the RIA.

### Reporting on the effectiveness of the SPC itself

243. The SPC could report on its own effectiveness. There would be an opportunity cost attached to this activity for members of the SPC.

244. The Wales Audit Office and the Welsh Government's Health and Social Services Department have developed a self-assessment tool and guidance for boards<sup>73</sup>. Were the SPC to adopt this model it would involve four steps:

- i. Preparation (agreeing scope, timing and briefing members)
- ii. Individual completion of the self-assessment tool and analysis of responses
- iii. Facilitated workshop and action planning
- iv. Evaluation of the process.

245. There would be an opportunity cost for members in taking part in the evaluation. In terms of step preparation, it could be sufficient for the matter to be briefly discussed at a meeting of the SPC itself. Completing the self-assessment tool should take no longer than half an hour each, which is a negligible cost. There is an opportunity cost in taking part in a facilitated workshop. This is anticipated to take half a day.

246. The work of preparing the self-assessment tool, analysing the responses, and organising the workshop would rest with the SPC's secretariat. This staff time is already accounted for in the RIA.

**Table 2.8:** Working out the estimated opportunity cost for the SPC to take part in a facilitated workshop

<b>Number and type of participant</b>	<b>Hourly gross wages (£) x participants x hours</b>	<b>Sub-total (£)</b>
Three senior full time trade union officials	$41^{74} \times 3 \times 3$	369
Three business sector representatives (senior manager level)	$41^{75} \times 3 \times 3$	369
Three senior public sector employer representative (director level)	$41^{76} \times 3 \times 3$	369

Facilitator		2,500
Employment on-costs (30%)		1,082
<b>TOTAL</b>		<b>4,689</b>

247. Therefore, the total cost of a self-assessment process is **£4,700**, rounded to the nearest hundred. It is anticipated that one self-assessment would take place every three years, starting in 2023-24.

### Benefits

248. A statutory SPC would, through advising the Welsh Ministers, provide national leadership to strengthen and promote consistency in social partnership working in Wales. It would provide a channel for the voice and participation of social partners in the development and implementation of policy through its representative structure. In the course of preparing advice for Welsh Ministers, the SPC would be able to gather information from social partnership organisations in a systematic way in order to inform its deliberations and improve the quality of advice to Ministers.

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# Costs and Benefits of Part 2: Social Partnership and Sustainable Development

## 1. Social Partnership Duty

### Introduction

249. Social Partnership is a way of working with shared values and a common purpose. Social Partnership works on the basic principle that the aims and objectives of an organisation can be best achieved by employers, staff and their unions working together in a spirit of co-operation and collaboration.

250. Social partnerships has been found to have positive effects on a range of important workplace factors, including increased productivity, enabling innovation, enhancing stability and reduced risk of industrial disputes (European Commission, 2016<sup>77</sup>).

251. The primary purpose of the social partnership duty is to improve the delivery of public services and the social, economic, environmental and cultural well-being of Wales.

252. The social partnership duty will provide social partners) with a voice that will help shape and influence policy development and implementation through social partnership, to help deliver the desired outcomes of better public services and improved well-being in Wales.

253. The following options have been identified and explored in relation to a social partnership duty:

### **Option 1 – Business as usual**

#### Description

254. There would be no change to legislation under this option. This option would rely on current provisions within WFG Act 2015 which does not require all in-scope public bodies to seek consensus or compromise with workers through their recognised trade union(s) (or other representatives of its staff) when setting well-being objectives and taking decisions of a strategic nature about the steps the public body takes to meet those well-being objectives.

#### Costs

255. There are no direct costs associated with this option. There may be opportunity costs associated with not achieving alignment with fair work ambitions through social partnership or inconsistency in the approach between public service providers.

## Benefits

256. Extant arrangements would remain unchanged; therefore, no additional planned benefits are expected to accrue.

## Summary

257. Under this option, public bodies would not be required to act in social partnership by engaging trade unions or other representatives of their staff when exercising their well-being duties in section 3(2) of the WFG Act 2015.

258. There would be no legislative change required under this option.

259. This option does not meet the objectives of the Welsh Government's White Paper 'A more Equal Wales: Strengthening Social Partnerships' published in November 2019, which sets out proposals for legislation to create statutory social partnership arrangements in Wales with associated provisions that create a framework for driving social equality forward, building on the principles of partnership and collaboration.

## **Option 2 – Use existing legislation to effect the changes, principally the Well-being of Future Generations Act (WFG Act) 2015**

### Description

260. Section 16 of the WFG Act 2015 provides that the Welsh Ministers may issue guidance to public bodies about the exercise of functions under Part 2 of the Bill and requires those public bodies to have regard to such guidance. Statutory guidance for public bodies subject to the well-being duty in the WFG Act 2015 was published in 2016. Shared Purpose Shared Future 1 – Core Guidance and Shared Purpose Shared Future 2 – Individual role (public bodies) provides guidance on the setting and delivering of well-being objectives, including guidance on the involvement and collaboration way of working.

261. The statutory guidance for the WFG Act 2015 could be reviewed or issued to encourage public bodies to involve their recognised trade union(s) or workers when setting well-being objectives and when taking decisions of a strategic nature about the steps the public body intends to take to meet those well-being objectives.

### Costs

262. The costs would broadly be the same as for option 3 considering:

- a. the guidance required public bodies to report in the same way as under option 3;
- b. implementing the guidance by public bodies would have a similar impact to the cost implications for social partnership described under option 3;
- c. the cost to the Welsh Government of developing guidance would be similar to that as under the draft Bill and described under option 3;

- d. the familiarisation costs to public bodies of understanding any guidance issued by Welsh Ministers is likely to be the same as under option 3.

### Benefits

263. The benefits would strengthen and build on the well-being duty in the WFG Act 2015, in particular how public bodies act in accordance with the sustainable development principle.

### Summary

264. The proposals would not meet the aim of placing social partnership on a statutory footing. There would be no requirement for in-scope public bodies to submit their annual reports to a SPC to demonstrate their delivery of the respective duties contained within the provisions of the Bill. The costs would be expected to be similar to those identified under option 3.

## **Option 3 – Establish a social partnership duty (preferred)**

### Description

265. This option would create a social partnership duty on certain public bodies to seek consensus or compromise with their recognised trade union(s) or other representatives of its staff (where appropriate) when setting well-being objectives and when taking decisions of a strategic nature about the steps the public body intends to take to meet those well-being objectives, and to report annually on this to the SPC). The primary purpose of the social partnership duty is to improve the delivery of public services along with social, economic, environmental and cultural well-being of Wales. The Bill specifies that, in-scope public bodies must:

- in so far is reasonable seek consensus or compromise with its recognised trade unions or (where there is no recognised trade union) other representatives of its staff when setting and carrying out its well-being objectives;
- In considering what is reasonable, public bodies must consult partners at a formative stage of the process;
- Otherwise provide partners with sufficient time and information throughout the process to adequately consider what is proposed;
- produce annual reports detailing how they have complied with the duty, which are submitted to the SPC, for scrutiny
- in considering what is reasonable (when seeking consensus or compromise) take into account guidance published by the Welsh Ministers.

266. For the Welsh Ministers, a different social partnership duty will apply. Welsh Ministers will have a duty to consult only in relation to the second limb of the well-being duty in section 3(2)(b), that is, when delivering on their well-being objectives, for strategic decision-making. However, consultation will operate more

broadly as Welsh Ministers will be required to consult across the range of social partners (employers and trade unions) who sit on the SPC.

## Costs

**Table 3:** Summary of costs for Option 3

<b>Summary of costs (£)</b>	
<b>Transition</b>	
Table 3.4	22,300
<b>Total transitional cost</b>	<b>22,300</b>
<b>Annual</b>	
Table 3.1	162,800
Table 3.2	22,000
Table 3.3	21,200 (once every three years)
Table 3.5	82,200
<b>Total annual cost</b>	<b>288,200</b>

## Staffing

267. Welsh Government staff will play a pivotal role in the introduction and administration of this duty.

268. We anticipate that the staff outlined in Table 3.1 below would be sufficient to manage the Policy administration of the duty. Associated to the Implementation and administration costs include engaging with social partners and others.

269. The majority of costs to the Welsh Government would arise from the need, particularly in the first year, of holding awareness/familiarisation training sessions to support implementation of the statutory duty, preparation and issuing of guidance which would highlight the benefits that could be realised by embracing the duty. Additionally, this resource will cover the collection, processing and analysis of annual reports. Also included are the resource costs of publishing the Annual Report submitted to the SPC from both all Public Bodies and Welsh Ministers which would provide visibility and demonstrate compliance with the duty.

**Table 3.1 – Running costs for Welsh Government staff**

<b>Grade</b>	<b>Annual staff cost <sup>78</sup> (£)</b>	<b>Costs per days per year (divided by 220)</b>	<b>Annual cost</b>
Deputy Director FTE 22 days per year	120,174	546	12,012

Grade	Annual staff cost <sup>78</sup> (£)	Costs per days per year (divided by 220)	Annual cost
Grade 6 FTE 66 days per year	105,117	478	31,548
SEO FTE 220 days per year	66,364	302	66,440
HEO FTE 220 days per year	52,774	240	52,800
<b>Total</b>			<b>162,800</b>

270. Rounded to the nearest hundred, annual running costs for Welsh Government staff to administer this duty is **£162,800**.

271. Once implemented the direct ongoing costs to the Welsh Government are considered to be:

- consideration and analysis of annual reports from each of the specified public bodies and advice provided by the SPC;
- the potential issuing of guidance on social partnership;
- Preparing Ministerial advice on progress or the resolution of 'issues' as they arise.

272. There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.

273. In scope public bodies, under the social partnership duty would be required to produce separate annual reports detailing how they have complied with the duty which will be submitted to the SPC, for scrutiny. Annual reports would be required to be submitted as soon as reasonably practicable after the end of the financial year,

274. Welsh Ministers will publish an annual report as soon as reasonably practicable following the end of the financial year on how they have complied with the social partnership duty. The Welsh Ministers are required to submit their annual report to the SPC and lay it before the Senedd.

275. Costs would accrue to the Welsh Government for processing and analysing the reports for consideration by the SPC. These are considered to be:

**Table 3.2 – Welsh Government costs for processing and analysing reports**

Grade	Annual staff cost <sup>79</sup> (£)	Costs per days per year (divided by 220)	Annual cost
Deputy Director FTE 5 days per year	120,174	546	2,730
Grade 6 FTE 15 days per year	105,117	478	7,170
SEO FTE 20 days per year	66,364	302	6,040
HEO FTE 25 days per year	52,774	240	6,000
<b>Total</b>			<b>21,940</b>

276. Rounded to the nearest hundred, the annual costs for processing and analysing reports under the SP duty is **£22,000**.

#### The potential issuing of guidance on Social Partnership

277. It is unlikely that new guidance will be issued frequently. New or updated guidance will not necessarily be issued in response to each annual reporting cycle. For the purposes of this RIA, it is assumed that new guidance on social partnership will be issued every 3 years.

278. We have assumed that guidance on the social partnership duty will be issued every 3 years because public bodies are already doing many of the actions associated with the social partnership duty such as setting well-being objectives. Therefore, we anticipate that guidance does not need to be issued more frequently.

**Table 3.3:** cost of developing a single piece of statutory guidance every 3 years

Grade	Annual staff cost <sup>80</sup> (£)	Costs per days per year (divided by 220)	Annual cost
Deputy Director FTE 5 days per year	120,174	546	2,730
Grade 6 FTE 15 days per year	105,117	478	7,170
SEO FTE 17.5 days per year	66,364	302	5,285
HEO FTE 25 days per year	52,774	240	6,000
<b>Total</b>			<b>21,185</b>

279. Therefore, the potential cost of developing a single piece of statutory guidance rounded to the nearest hundred is **£21,200**.

### Familiarisation

280. The social partnership duty will affect how public bodies discharge their well-being duty to set and meet well-being objectives under the WFG Act 2015. The costs to public bodies arising from the social partnership duty are detailed in the following paragraphs.

281. If the list of bodies listed in section 6 of the WFG Act 2015 is amended, then the familiarisation costs and costs of social partnership within public bodies as set out in the following paragraphs would increase by virtue of new bodies coming under the social partnership duty.

282. Welsh Government officials will provide events and guidance for the public sector to aid familiarisation with the social partnership duty (and also the amendment of section 4 of the WFG Act 2015 by substituting ‘fair work’ for ‘decent work’ within the existing ‘A Prosperous Wales’ well-being goal in section 4 of the WFG Act 2015 (see paragraphs 299 – 319 below). For the purposes of this RIA, it is assumed that the initial familiarisation activities will take approximately three hours of an officer’s time and this familiarisation will be offered to three representatives (e.g. Chief Executive, Corporate Planning Manager and HR Officer) and three Trade Unions representatives from each of the 47 in scope public bodies. This recognises the different starting points that different bodies are at in terms of their readiness for complying with the duty and it is our intention to respond to individual stakeholder needs as required. The Auditor General for Wales and the Future Generations Commissioner’s office will also require familiarisation, so these costs have been included in the table below.

**Table 3.4:** costs to public sector for familiarisation with social partnership duty

<b>Position</b>	<b>Hourly Gross Wage (£)</b>	<b>Hours</b>	<b>Sub-total</b>
Chief Executive or equivalent	41	3	123
Corporate Planning Manager	23	3	69
HR Officer	14	3	42
Trade Union representative x 3	14 x 3	3	126
Employment on-costs (30%)			108
<b>Total</b>			<b>468</b>
Auditor General for Wales office	41	3	123

Future Generations Commissioner	41	3	123
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283. Therefore the total cost for public sector representatives to familiarise themselves with the social partnership duty is estimated to be  $468 \times 47 = \text{£}22,000$  (to the nearest hundred) and costs for the AGW and FGC of £319. These costs are expected to be incurred in 2023-24.

284. Familiarisation may also be required should Welsh Ministers issue guidance on the operation or reporting of social partnership. Guidance would be anticipated to be issued on, at most, an interval of an annual cycle, but in practice it is more likely to be issued much less frequently. This is because if guidance is issued, it is likely to be a response to the annual reporting cycle. As stated above, for the purposes of this RIA, we anticipate guidance would be issued every 3 years.

#### Additional costs of social partnership within public bodies

285. Welsh Government officials surveyed the 47 public bodies to seek to establish the possible impact of implementing the Social Partnership Duty on facility time. In total Welsh Government received 25 responses – a response rate of 57%. Responses indicate there is a lack of consistency across public bodies presently around how they set their well-being objectives, most believe a change in process will be necessary, and that additional facility time will be required.

286. In terms of baseline facility time currently provided, this varied across public bodies dependent on several factors including the size of the workforce of the organisation and the number of recognised trade unions. It is not possible to provide a baseline cost for facility time because payment is based on an individual's substantive contract of employment and the cost is in line with this employment.

287. Assumptions are made that social partnership meetings take place four times per year and that representation of the public sector consists of three attendees from the trade union side and three attendees from the employer side. For cost purposes, assumptions are also made that the employer side includes a senior HR and industrial relations officer. As acknowledged above, worker representatives can be from any grade across the organisation, and it is difficult to accurately assess costs of their participation. To understand the upper limits, the potential costs are aligned with that of a senior HR and industrial relations officer. In addition, working in social partnership also takes place outside of formal social partnership meetings. While attendance at such formal meetings will attract a cost there will also be work undertaken outside of the meetings and structures that will promote and imbed the social partnership model and approach and which may attract a cost which it is not possible to measure. A proactive approach to social partnership will mean that employers spend less time responding to challenges within the workplace as they are engaging strategically in social partnership and as a result this would be a more effective and efficient use of time and resources.



**Table 3.5:** costs to public bodies for attending social partnership meetings

<b>Number and position</b>	<b>Hourly gross wages x participants x hours x meetings/year</b>	<b>Sub-total</b>
Three trade union officials <sup>81</sup>	14 x 3 x 4	168
Three public sector employer representative <sup>82</sup>	14 x 3 x 4	168
Employment on-costs (30%)		101
<b>Total (per meeting)</b>		<b>437</b>
<b>Total (per year)</b>	<b>437 x 4</b>	<b>1,748</b>

288. Given that currently 47 public bodies will be subject to the social partnership duty, the total annual cost to public bodies for attending social partnership meetings is **£82,200** (1,748 x 47) rounded to the nearest hundred.

#### Costs to other organisations

##### *Auditor General for Wales*

289. Section 15 of the WFG Act 2015 confers a power on the Auditor General for Wales to carry out examinations in order to assess the extent to which public bodies have acted in accordance with the sustainable development principle in both the setting and taking of steps to meet those well-being objectives. The Auditor General must carry out at least one examination of each of the public bodies within each five year 'reporting period'. The SPPP Bill does not extend the scope of section 15 of the WFG Act to include the social partnership duty (section 16 of the SPPP Bill), therefore there are no direct financial implications on the Auditor General and Audit Wales. The Auditor General will however need to be aware that the public bodies they are examining will be discharging their well-being duty under the WFG Act 2015 alongside their social partnership duty.

290. As set out above, the Welsh Government will provide events and guidance for public bodies to aid familiarisation with the social partnership duty. This will be open to the Auditor General and Audit Wales. We expect that the total cost for Audit Wales to familiarise themselves with the social partnership duty to be the same as set out in para 283, which would be £319. This cost would be incurred in 2023-/24. There are not considered to be costs to other organisations as the private and the third sector are not subject to this duty.

##### *Future Generations Commissioner for Wales*

291. The Future Generations Commissioner for Wales' general duty is to promote the sustainable development principle (as defined in section 5 of the WFG Act). As part of this duty, they are required to encourage public bodies to take a greater account of the long-term impact of their activities and monitor and assess the meeting of the well-being objectives set by the public bodies subject

to the well-being duty in WFG Act 2015. They also have powers to provide advice or assistance to public bodies, encourage best practice, and encourage bodies to work together. They have the power to review the extent to which a public body is safeguarding the ability of future generations to meet their needs. The SPPP Bill does not change the general duty or powers of the Future Generations Commissioner and does not change the sustainable development principle (section 5) to which their general duty is attached to and therefore there are no direct financial implications on the Commissioner. The Future Generations Commissioner and their office will however need to be aware that public bodies they are encouraging, monitoring and supporting will be discharging their sustainable development and well-being duty under the WFG Act 2015 alongside their social partnership duty.

292. The Commissioner is not being asked to provide advice or assistance on matters concerning the social partnership duty. The Welsh Government has the power to issue guidance on social partnership (section 16(2)) and is required to consult with the SPC before publishing the guidance. The SPC, under the Bill, has the power to provide information and advice to the Welsh Ministers in relation to the social partnership duty, and the pursuit of the 'A prosperous Wales' well-being goal.

293. As set out above, the Welsh Government will provide events and guidance for public bodies to aid familiarisation with the social partnership duty. This will be open to the Future Generations Commissioner for Wales and their office. We expect that the total cost for Audit Wales to familiarise themselves with the social partnership duty to be the same as set out in para 283, which would be £319. This would be incurred in 2023/24.

## Benefits

294. Under this option, a social partnership duty would build on the well-being duty in the WFG Act 2015 to ensure that social partnership is a key feature of how public bodies maximise their contribution to the seven well-being goals. Further, given the importance of social partnership to how bodies contribute to the well-being goals, it will strengthen action and help deliver recommendations set out in Fair Work Wales.

295. It was apparent during the Covid19 crisis that working in social partnership, particularly in social care, but also in relation to essential services and key workers in other sectors proved beneficial. The crisis demonstrated how social partnership can work on many levels, flexibly and responsively, to address urgent challenges. During the pandemic, Welsh Ministers met trade unions and employers across a range of sectors to discuss workplace safety, as well as economic and social challenges.

296. Embedding the social partnership duty in legislation is drawn from the existing evidence of the positive impact that social partnership, with collective bargaining and representative trade unions at its root, can have on the actions by public bodies and in turn helping to deliver a more equal society. Social Partnership

brings benefits for workers and employers, ensuring that both have equal voice and are able to reach mutually beneficial agreements that are fair and equitable.

297. Option 3 is the preferred option as it would provide for a statutory social partnership duty on certain public bodies and Welsh Ministers which would act as a means to strengthen and enhance Social Partnership in Wales and embed it firmly into the way in which bodies operate in the pursuit of the well-being goals. It would support cooperative working to improve the delivery of public services, along with improving the economic, social, environmental and cultural well-being of Wales.

### Additional Costs

298. It has not been possible to calculate the additional costs of the potential outcomes of the framework established by the proposed legislation, although estimates are made as to the likely frequency that the provisions in the draft Bill would result in legislative intervention. This is because the outcomes rely on multiple parties working across different levels, with individual outcomes per public body, similar to outcomes under the WFG Act 2015.

## **2. Fair Work**

### Introduction

299. The Bill amends section 4 of the WFG Act 2015 by substituting 'fair work' for 'decent work' within the existing prosperous Wales goal.

300. This legislative change references fair work as part of the "A prosperous Wales" well-being goal (one of the seven well-being goals for Wales set out in the WFG Act 2015). The intention behind this amendment is to require all public bodies subject to the well-being duty in the WFG Act 2015 (including Welsh Ministers) to consider how fair work can contribute to well-being and to consider further activity to promote fair work in that context.

301. There are no direct cost implications to changing the reference from 'decent work' to 'fair work' in the 'A Prosperous Wales' goal of the Well-Being of Future Generations Act beyond the costs associated with producing advice and guidance on how organisations can consider fair work effectively in the context of well-being.

302. Any specific actions that organisations take to promote fair work in the context of the 'A Prosperous Wales' well-being goal will be for each individual organisation to consider and decide upon. We cannot predict those actions or their costs and each organisation will wish to consider affordability as well as the impact of such activity. The Bill is not prescriptive on the specific interventions organisations must make to promote fair work.

303. The focus of this section is therefore on assessing the overarching benefits and costs of (a) maintaining the status quo and (b) amending the WFG Act 2015.

### **Option 1: Business as usual – maintaining the status quo around the reference to ‘decent work’ in the WFG Act 2015.**

#### Description

304. The ‘A Prosperous Wales’ goal of the WFG Act 2015 contains a reference to ‘decent work’. We could pursue the no-change option of continuing without amending this legislation, thereby minimising any potential disruption or additional costs associated with change and reform.

#### Costs

305. This ‘business as usual’ option is not cost free. However, we know from reports of the Future Generations Commissioner there is room for improvement in how public bodies link “fair work” into their well-being objectives and steps.

306. Also, the Fair Work Wales report recommended integrating and embedding fair work into the Well-Being of Future Generations Act and the Future Generations Commissioner is broadly supportive of that approach.

307. Maintaining the status quo also potentially risks intangible costs related to confusion and misunderstanding that could result from the continuation of using the terms ‘decent work’ and fair work’ in parallel.

#### Benefits

308. This current approach is not without its benefits. It helps make the very clear link between the experience of work and individual and collective well-being. The preferred option does not lose that link, but arguably helps make it clearer for the reasons set out in the benefits section below.

### **Option 2 (preferred): amend the WFG Act 2015 to replace ‘decent work’ with ‘fair work’.**

#### Description

309. An amendment of section 4 of the WFG Act 2015 by substituting ‘fair work’ for ‘decent work’ within the existing ‘A Prosperous Wales’ well-being goal in section 4 of the WFG Act 2015.

310. In amending the WFG Act 2015 to include a reference to fair work, this Bill will require public bodies in Wales to consider how fair work can contribute to their well-being objectives in general and their pursuit of the “A Prosperous Wales” well-being goal in particular.

311. The change to “A Prosperous Wales” does not change the general duty or powers of the Future Generations Commissioner and does not change the sustainable development principle (section 5) to which their general duty is attached and therefore there are no direct financial implications on the Commissioner.

312. The SPC, under the Bill, will have the power to provide information and advice to the Welsh Ministers in relation to the pursuit of the “prosperous Wales” well-being goal by public bodies when carrying out sustainable development under the WFGA 2015 (Part 2). As set out above the Welsh Government will produce non-statutory guidance on how those bodies subject to the WFG Act 2015 may wish to approach considering fair work in the pursuit of the ‘A Prosperous Wales’ well-being goal.

313. The Future Generations Commissioner and their office will, however, need to be familiar with what fair work means in the context of the well-being goals so that they can promote the sustainable development principle and encourage public bodies to consider the long-term impact of the things they do. The Commissioner has previously provided signposting to becoming a living wage employer (Fair Work Theme) as part of their wider *Simple Changes* programme.

### Costs

314. Apart from familiarisation costs (see paragraph 283 above) the cost implications of substituting fair work for decent work are limited to producing non-statutory guidance on how those bodies subject to the WFG Act 2015 may wish to approach considering fair work in the pursuit of the ‘A Prosperous Wales’ well-being goal. This is likely to include illustrative examples of measures that can be taken to provide or promote fair work and case studies. The costs of producing such guidance are indicated in the table below. For the purposes of this RIA, it is assumed that one piece of guidance will be produced each year. We do not anticipate the need for further guidance above and beyond this, given that the term ‘fair work’ is simply replacing the existing term of ‘decent work’ in the ‘A Prosperous Wales’ well-being goal.

**Table 4** Indicative costings of producing non-statutory guidance on how to approach fair work in the pursuit of the ‘A Prosperous Wales’ well-being goal:

Member of staff and grade	Annual staff cost <sup>83</sup> (£)	Daily rate (£) (divided by 220)	Days	Sub-total (£)
Deputy Director – sign off	120,174	546	x 0.5	273
Legal services – Grade 7	86,731	394	x 2	788
Policy lead – Grade 7	86,731	394	x 7	2,758

Policy lead – SEO	66,364	302	x 4	1,208
Departmental Policy lead – Grade 7	86,731	394	x 1	394
<b>TOTAL</b>				<b>5,421</b>

315. Therefore the total opportunity costs for providing non-statutory guidance on how to approach fair work in the pursuit of the ‘A Prosperous Wales’ well-being goal is **£5,400** (rounded to the nearest hundred).

### Benefits

316. The amendment of the WFG Act 2015 in the way described goes some way to delivering on the recommendation of the Fair Work Commission that, “...*the well-being objectives of public bodies set under the Well-being of Future Generations (Wales) Act 2015 should incorporate fair work...*”.

317. The purpose and intended effect of this provision is to secure fair work as part of the description of the “A prosperous Wales” well-being goal.

318. This will mean that all public bodies subject to the well-being duty in the WFG Act 2015– including the Welsh Ministers – will need to consider fair work in pursuing the “A prosperous Wales” well-being goal. It will enable fair work to be pursued by public bodies and Welsh Ministers when carrying out sustainable development under the WFG Act 2015.

319. This approach has the following added benefits:

- Firstly, it locks fair work into the existing Well-being goals, which helps reinforce the connection between fair work and individual and collective well-being.
- Secondly, it avoids duplication or the perception of creating a competing fair work goal and duty outside of the Well-Being legislation.
- Thirdly, it avoids the continuation of the use of different terms that could potentially be interpreted to cover broadly similar or overlapping activity i.e., decent work and fair work. Consistency in terminology will be welcomed both internally and externally.
- Fourthly, an interface with drawing on the WFG Act 2015 is consistent with the approach across the Social Partnership and Public Procurement Bill.

## Costs and Benefits of Part 3: Socially Responsible Public Procurement

### Introduction

320. Part 3 of the Bill establishes duties towards delivering socially responsible public procurement and contract management in Wales. The intentions are to:

- support contracting authorities in ensuring that well-being goals are central considerations in procurement, in order to support economic growth and the long-term sustainability of public services;
- simplify, and remove duplication between the large number of policy expectations placed on procurement departments;
- ensure that well-being outcomes are at the heart of procurement strategies and processes;
- improve the link between procurement processes and the delivery of outcomes by better contract management;
- improve transparency by recording metrics and publishing regular reports sharing good practice and areas where improvements are needed; and
- hold organisations to account for ensuring that contract conditions supporting socially responsible practices are maintained throughout supply chains, particularly in large construction contracts and outsourcing services contracts.

321. The public procurement and contract management duties within the Bill will require contracting authorities to account for well-being outcomes achieved through their procurement activity, and through increased due diligence in supply chains, particularly in outsourcing and major construction contracts (over £2m).

322. It is very difficult to quantify the benefits of socially responsible procurements in financial terms, especially when these are considered over the longer term. Costs are also difficult to quantify within the system as a whole, and so in this section we have focused on the additional costs that would be incurred in establishing and administering new processes to support these duties. Each of the well-being outcomes would need to be costed separately, and simple mechanisms and multipliers for extrapolating benefits across Wales would have to rely on some unreliable assumptions and inadequate data.

323. The return on investment for a given procurement often varies over time, and resources can be deployed in variable ways to reflect the work needed to both deliver the contract and achieve socially responsible outcomes.

324. The following case studies, provided by Wales Council for Voluntary Action (WCVA) and Denbighshire County Council, highlight two successful but different approaches to achieving socially responsible procurement. In both cases value was added across social, economic and environmental well-being, and collaborative and innovative procurement approaches were used. They differ in the way in which they quantify the time and effort expended by staff in taking this approach.

325. They both illustrate how difficult it would be to separate out the “socially responsible” elements of the project and cost them separately. They also show that, when addressed early in the process and with good engagement across the supply chain, socially responsible procurement need not represent an expensive undertaking; the benefits can often outweigh the time and effort expended.

326. They also illustrate that we are not starting from a zero base with the procurement duties in this Bill; there is already much good practice taking place. The aim of these procurement duties is to ensure that good practice is applied more consistently across Wales.

### **Case study 1 – Furniture procurement by the Wales Council for Voluntary Action (WCVA) and Wales Local Government Association (WLGA).**

327. In 2021, WLGA and WCVA commissioned social enterprise Ministry of Furniture (MoF), based in Port Talbot, to fit out a new office space in Cardiff with a value of £230,000. The focus of this work was to maximise the amount of existing furniture stock that could be re-used and re-purposed, with minimal material sent to landfill.

328. In partnership with Merthyr Tydfil Institute for the Blind (MTIB), MoF created a modern, flexible and hybrid bespoke working space for WCVA, The National Lottery Community Fund, WLGA and Data Cymru for their offices in Cardiff, in autumn 2021. The vision was to create a space that reflected the diversity of their sectors with sustainability as a high priority.

329. By re-using, remanufacturing, and recycling furniture from the organisations’ existing offices, new products were created with an expected lifespan in line with that of new furniture.

330. Benefits included:

- 187 pieces of furniture saved from landfill
- 95 new desks remanufactured
- 250 lockers and planters remanufactured
- 481 pieces of furniture created
- All products FSC certified
- Reduced number of deliveries
- 15,861 kg of CO<sub>2</sub> emissions saved. 43% CO<sub>2</sub> emissions saved against all new furniture
- Socially responsible procurement outcomes achieved without any additional cost due to this way of working being regarded as ‘business as usual’.

331. This project shows that even relatively small contracts can operate to best practice in terms of environmental and social outcomes whilst not being



burdensome in their bureaucracy and delivery. WCVA said “it didn’t feel burdensome, or create additional work, to operate in this way. What did undoubtedly help us though, as an organisation with only a single procurement professional (most voluntary organisations won’t have any), is the access to the Welsh Government Commercial Delivery Furniture Framework this simplified and reduced the burden on us considerably.”

### **Case study 2 – East Rhyl Sea Defences for Denbighshire County Council**

332. The project, delivered by Balfour Beatty and costing £23 million overall was the first major project to use the Denbighshire Community Benefits Hub (the CB Hub), launched in March 2020. The CB Hub held monthly meetings with the contractor and other stakeholders including Careers Wales, various local community led groups and social enterprises. The approach was to work with Balfour Beatty to maximise the well-being outcomes without inflating project cost.

333. As the project was delivered during the pandemic all meetings apart from the final two were held virtually on Microsoft Teams. The cost of the CB Hub therefore, of a maximum of 20 working days across project duration was estimated at £300/day, equating to £6,000. Similar resource on the contractor’s side to support this approach was created as a part of this project. Balfour Beatty stated that it changed how they approached the work, and this has been evident on future projects. It is not possible to calculate the extent to which these additional supply side costs might be apportioned within future bids.

334. Benefits included:

- 99% waste diverted from landfill
- 82% carbon dioxide reduction on site (offices)
- 80% of rock revetment sourced locally
- 99% of project spend with local subcontractors (with 40 miles of project)
- £9.7m was spent with local contracts within 20 miles of project site
- 86% of supply chain were SMEs
- 85% local employment of site (within 40 miles)
- 8 new FTE jobs created
- 191 days work experience (somewhat limited because of COVID restrictions)
- 112 students engaged through curriculum and STEM activities (somewhat limited because of COVID restrictions)
- Donations to local food banks, and of materials, e.g. redundant beach groynes (hardwood structures that act as breakwaters) to Lifeboat station (to create a memorial to six lifeboat crew who lost their lives in a 1853 rescue) and Friends of the Cob (used to create an area for local schools to use as an outdoor classroom, in partnership with North Wales Wildlife Trust)
- Following community engagement, a beach access gate was installed to enable access during weekends and bank holidays
- Creation of 3 ponds at Morfa area of Rhyl to enhance 35 acre wetland area in Prestatyn. Support included excavation, dredging and modelling

- I Can mental health awareness offered to project team plus supply chain partners
- I Will health screening offered to project team plus supply chain – this was taken up by a majority of supply chain and involved a full health and lifestyle check
- A proxy financial social value of £7,201,813 was reported via the framework provider.
- Project delivered under budget and completed ahead of schedule
- 133,000 hours worked without no lost time incidents, or reportable injuries.
- Stronger partnerships with many local public and third sector bodies including schools, the RNLI, wildlife groups and sports organisations.

## **Option 1 – Business as usual**

### Description

335. This option represents the status quo. Existing procurement policy priorities – and those planned under the incoming Wales Procurement Policy Statement would be supported by Welsh Government’s procurement policy team.
336. Under this option there would be no additional procurement duties within the Bill. Delivery of and support for existing procurement policy and associated initiatives and projects would be led by a small team within Welsh Government’s Commercial Procurement Directorate. The costs for this are set out under Table 5 below. This option would represent no additional cost.
337. However, the status quo for procurement is also changing as a result of the UK Government legislating on behalf of Welsh Contracting Authorities in its Procurement Bill. In its written statement, the Welsh Government announced that decisions on the policy outcomes we want from procurement should be made in Wales, and this Social Partnership and Public Procurement (Wales) Bill was referenced as the vehicle through which the achievement of priority policy outcomes will be enshrined in legislation. If this is not included in the Bill, another legislative vehicle will need to be sought.
338. This option would also not incur any additional benefits to either the wider public sector or private sector. There are also unquantifiable opportunity costs in not synchronising procurement policy development with Social Partnership through the Bill, namely:
- missed opportunity to provide further challenge to public sector procurement practice;
  - missed opportunity for greater cohesion and consistency between closely related policy areas;
  - limited legislative platform for Welsh Government to drive policy outcomes;

- missed opportunity to use annual reporting for data driven intervention and policy development;
- missed opportunity to mandate transparency in supply chains:
- missed opportunity to strengthen mechanisms for addressing concerns raised about procurement and contract management activities; and
- missed opportunities to promote forward planning and greater focus on socially responsible outcomes.

**Table 5** – breakdown of current Welsh Government staff administration costs for Commercial Procurement Directorate (not additional costs). This information is included here for purposes of comparing “business as usual” with additional costs of the options listed below.

<b>Costs for Commercial Procurement Directorate</b>		
<b>Commercial Procurement</b>	<b>2020</b>	
	<b>Total</b>	
<b>Grade</b>	<b>Headcount</b>	<b>Cost</b>
Director	1	156,792
Deputy Director	1	120,174
Grade 6	2	210,234
Grade 7	6	520,386
SEO	15	995,460
HEO	12	633,288
EO	5	202,520
TS	2	67,854
<b>Programme Sub-Total</b>	<b>44</b>	<b>2,906,708</b>
Grade 6	4	420,468
Grade 7	6	520,386
SEO	14	929,096
HEO	15	791,610
EO	7	283,528
TS	3	101,781
<b>DRC Sub-Total</b>	<b>49</b>	<b>3,046,869</b>
<b>Directorate Total</b>	<b>93</b>	<b>5,953,577</b>

\*N.B. based on actual existing staff costs and not average grade rates.

339. When the business case for the introduction of the National Procurement Service (NPS) was agreed in 2012/13 a number of posts were allocated against the delivery of that programme. Hence these costs are against programme costs. Whilst the NPS no longer exists, the service it provided is still provided by the Commercial Procurement Directorate and remains programme funded. Thus, this division between programme and DRC costs is historic and does not impact on the way the Directorate works or the activities it undertakes.

## **Option 2 –introduce new legislation with a narrowly defined socially responsible public procurement duty.**

### Description

340. Under this option contracting authorities would:

- a. apply the socially responsible public procurement duty (as set out in the Bill and Statutory Guidance) to all public procurement as defined in the draft Bill;
- b. set objectives for achieving the socially responsible public procurement goals and take all reasonable steps to meet these objectives for all of their 'prescribed procurements' – all construction contracts over £2m (including VAT), all outsourced services contracts plus any contracts so specified in regulations. The current policy intention is that the Welsh Ministers will, in regulations, prescribe contracts for goods and services above a thresholds for services and supplies established and updated every two years by the World Trade Organisation's Government Procurement Agreement (the GPA)
- c. publish procurement strategies, undertake annual reporting, publish a contracts register, and publish a forward look. Contracting authorities that do not carry out any prescribed procurements will not be required to publish annual reports.

341. Additionally, Welsh Ministers would publish an annual report, to include a summary of the annual reports received.

342. Many of the contracting authorities already have a published procurement strategy (Value Wales' 2013/14 Fitness Checks programme found that all but one local authority in Wales had a strategy in place), but the socially responsible public procurement duty would make this a legal requirement, along with the duty to prepare an annual report on its public procurement if it has awarded any prescribed procurements, and to publish these documents. Objective-setting would be a new activity but would be carried out within the context of developing strategies. Care will be taken to ensure that these requirements are proportionate, so smaller bodies with lower annual spend will not find the process overly burdensome.

343. In this option a summary of these objectives, strategies and reports would be reviewed by the SPC and its public procurement sub-group. Compliance would be achieved only through greater transparency and a refocusing of policy expectations and guidance.

### Bid costs

344. A likely result, particularly in the short term, of increased focus on socially responsible public procurement outcomes would be an increase in bid prices.

This would be the case if additional requirements are placed on business without careful consideration to ensure that requests are proportionate and focused around areas of higher risk. Developing high-quality statutory guidance and providing support to procurement and contract management staff across Wales would be key to achieving benefits in the most cost-effective manner. The overall long-term costs of delivering fair work, focusing on environmental outcomes and developing local economies may well be reduced as a result of increased economic equality, improved public services and environmental benefits.

### Living Wage

345. With an increasing focus on Fair Work, another likely additional cost would be incurred through increased adoption of the Real Living Wage throughout supply chains. As in Scotland, some bids are currently scored on a set of indicators about Fair Work which includes payment above the Real Living Wage. This is current practice in a number of public bodies across Wales, particularly those that are already Accredited Living Wage employers, but there is significant opportunity for more focus on promoting increased uptake of the Real Living Wage.
346. Any increase in the uptake of the Real Living Wage as a result of the socially responsible public procurement duty would clearly benefit those employees in supplier organisations who are paid below this level. There are also potential benefits to the Exchequer and Welsh Government in the form of higher tax receipts and a reduction in benefit payments (although these would have to be balanced against a potential reduction in corporation tax receipts), as well as a wider set of health and social benefits from reducing poverty. Cardiff Business School has been undertaking research into the impact of a wider uptake of the Real Living Wage in the context of the Welsh economy, but it is not possible to predict the likely increase in numbers of people seeing their pay uplifted as a result of this draft Bill, and so the impacts cannot be quantified. It should be noted that the Scottish Government has reported a significant increase in payment of the Real Living Wage through procurement as a result of their Sustainable Procurement Duty contained in the Procurement Reform (Scotland) Act 2014.
347. While there would be a benefit to employees, pay increases (for example to levels above the Real Living Wage) would result in a corresponding increase in the operating costs of those public sector suppliers currently paying lower wages to workers delivering contracts that would be covered by this Bill. The impact on the Welsh economy would depend on the response of those organisations to the cost increase. It is possible that some businesses may opt not to bid for contracts covered by this Bill in the future, particularly if supplying goods and services to the Welsh public sector represents a relatively small part of their business. Other businesses may respond to the cost increase through one (or a combination) of the following routes:

- a) by absorbing the cost increase by accepting a reduction in profits;

- b) by reducing operating costs, for example by reducing the number of employees or the number of hours they work;
- c) by seeking to pass the cost increase on to customers in the form of higher prices.

348. If supplier prices were to increase, then the volume of goods and services which could be procured with a fixed £7 billion public sector procurement budget would decline.

349. However, there are also (again unquantifiable) benefits to business in increasing pay - for example in reduced sickness and staff turnover, improved morale and productivity<sup>84</sup>. If businesses choose to respond by absorbing the cost increase this would represent a re-distribution from business owners/shareholders to a (typically) lower income group. The Welsh Government is working with academic and other stakeholders to establish the extent to which these cost benefits can be quantified.

350. The post-implementation review would include an assessment of the economic impact of the socially responsible public procurement duty.

#### Statutory Guidance

351. The Statutory Guidance on the overarching socially responsible public procurement duty, the duty to set objectives against well-being goals and publish a procurement strategy will be required by all contracting authorities. It will need to explain what is expected in the written objectives and strategy, and what needs to be considered within the overarching duty.

352. Although the statutory guidance will remain at a summary level and be succinct it will have to be supported by more detailed hands-on guidance as to how to deliver the duties. In some policy areas guidance development will require a review of existing guidance and in others new material will have to be developed. As well as developing and agreeing practical content with policy makers the resulting guidance will need to take account of changes to wider procurement legislation that are in progress at present. The wider guidance should include case studies, tools and link to training content, and its development will be an iterative process that will take several months. This will all have to be developed in consultation with social partners and wider stakeholders.

353. Training will also be made available for staff engaged in procurement and contract management in contracting authorities. This will be integrated with training needed to support the new UK-led procurement legislation, and this will be presented as “deep dive” sessions for staff. All training will be available prior to the duties coming into force to allow staff adequate time to prepare.

354. The Two-Tier Workforce Code will need to be taken from its existing form and built into the Statutory Guidance. It will change significantly as a result. The

development of new contract clauses (social public workforce clauses) is likely to require specialist third party legal support.

355. The Bill is introducing a new Contract Management duty for works contracts of a value greater than £2m. There will be six broad categories of contract clauses (social public works clauses) and work is underway to identify potential content and structures for more detailed clauses. This will require detailed guidance as to how they should be embedded within supply chains, including how they can be used with different forms of model contracts. The development of new contract clauses (social public workforce clauses) is likely to require specialist third party legal support. This guidance will also need to cover how clients should ensure mechanisms are put in place throughout supply chains to ensure that clauses are being used, and consistently so.

356. Bodies that carry our prescribed procurements will be required to publish annual reports. Statutory Guidance will need to define the expected content of these reports, and in particular what data should be collected and reported by contracting authorities. It should also be developed to encourage proportionality and avoid placing too great an administrative burden, and part of this will be engaging with the Future Generations Commissioner’s Office to streamline reporting requirements between this Bill and the WFG Act 2015. This will require engagement with practitioners from the wider public sector, policy staff, and third-party organisations that will be collecting data to rationalise and explain the data collection regime brought about by the Bill.

357. Consideration will also be needed for how the Two-Tier Workforce Code should be embedded within the Statutory Guidance. The Code itself is under review and will be published separately as the Public Workforce Code, but some of its commitments will need to be built into requirements within the Statutory Guidance, along with practical advice on how this should be done.

**Table 5.1:** Working out the estimated cost of producing each section of statutory and supplementary guidance.

<b>Member of staff and grade</b>	<b>Annual staff cost <sup>85</sup> (£)</b>	<b>Daily rate (£) (divided by 220)</b>	<b>Days</b>	<b>Sub-total (£)</b>
Deputy Director – sign off	120,174	546	1	546
Legal services – Grade 7	86,731	394	5	1,970
One policy lead – Grade 7	86,731	394	31	12,214
Policy lead – SEO	66,364	302	60	18,120
Translation				1,250
Publication				3,100
<b>TOTAL</b>				<b>37,200</b>

358. For the purposes of providing an indicative cost for producing statutory guidance under Option 2 this will amount to two pieces of guidance: statutory guidance on the procurement duties and a refresh of the Code of Practice on Ethical Employment in Supply Chains. We estimate the total cost to be £74,400 (to the nearest hundred). This cost is expected to be incurred in 2024-25.

### Staffing Costs

359. Costs under this option would largely be incurred from Welsh Government resources, required for support and monitoring delivery, and those arising from reporting by the wider public sector. Costs would also be incurred by the wider public sector in meeting its duties around reporting and publishing strategies. Costs would be higher in the initial years and decrease over time.

### Costs to the Welsh Government

360. Some costs for supporting Option 2 as noted above are already covered by Commercial Procurement Directorate's budget and as such are not additional costs that would be incurred due to the draft Bill. Collation of annual reports from data sets could be absorbed into existing roles, and therefore would not represent additional quantifiable cost.

361. The majority of costs to the Welsh Government under this option arise from the need for augmented resource, particularly in the first couple of years, to support implementation of statutory guidance and collection, processing and analysis of annual reports. It would also include the costs of publishing the Welsh Government's own Annual Report which would set out achievements for each preceding year and make recommendations for future years. This would be a significant piece of work requiring data collection, cleansing and analysis which we estimate would represent around 15 days' work each for two officials, as set out in Table 5.2 below.

362. Colleagues within the Sell2Wales team of the Economy, Treasury and Constitution Group of Welsh Government have suggested a series of four virtual monthly events, and five in-person two-hour long awareness sessions across Wales in order to help ramp up supplier readiness to deliver the Socially Responsible Procurement duty under the Bill. Free of charge to suppliers and delivered under the Business Wales contract, it should be noted that whilst an estimate and potentially subject to change due to the fact that this contract is about to be renewed, these costs are estimated **to be around £16,500**. This figure has been added to Table 5.4 below.

**Table 5.2:** Costs arising from additional workload in producing the Welsh Government's Annual Report.

Grade	Annual staff cost <sup>86</sup> (£)	Daily rate (£) (divide by 220)	Days per year spent	Cost per annum (£)
Senior procurement	66,364	302	15	4,530



official (SEO equivalent) x 1				
Procurement official (HEO equivalent) x 1	52,774	240	15	3,600
<b>Total</b>				<b>8,130</b>

363. Therefore, the total estimated cost for producing the Welsh Government's Annual Report is £8,100 (to the nearest hundred).

364. Tables 5.3 and 5.4 set out estimated costs for this additional resource and associated programme required to support delivery under Option 2. In compiling these estimates, consideration has been given to how the Scottish Government undertook broadly the same functions to support approximately 110 bodies, which according to colleagues in the Scottish Government's Procurement and Property Directorate, has been proportionate and effective. Option 2 would also require effective project planning to underpin implementation of the new socially responsible public procurement duty. This would be undertaken by the additional staffing noted in Table 5.3.

365. In order to inform and upskill the wider public sector, implementation of Option 2 would require additional activity such as publication of statutory and supplementary guidance, training sessions, one-to-one meetings and webinars, communications, and regional awareness sessions. Estimated costs for these activities are given in Table 5.4.

**Table 5.3:** additional costs to be incurred for enhanced staffing to support ongoing delivery of Option 2

Grade	Annual staff cost <sup>87</sup> (£)	WTE	Cost per annum (£)
Grade 7	86,731	0.5*	43,366
SEO	66,364	2	137,728
HEO	52,774	2	105,548
Team Support	33,927	0.5	16,964
<b>TOTAL</b>			<b>303,606</b>

\*Representing half their workload

366. Rounded to the nearest hundred, the costs for enhanced staffing to support Option 2 are **£303,600** per annum (**rounded to the nearest hundred**).

**Table 5.4:** estimated additional programme costs to support implementation of Option 2

Policy	Cost (£)	Financial year(s) costs are expected to be incurred

Procurement Advice Note	Staff time only	
Development of statutory guidance	74,400	2024/25
Procurement Bulletin	Staff time only	
Regional awareness sessions	10,000	2023/24
Staff travel to meet heads of procurement	5,000	2023/24
Review and reporting	25,000	2024/25
Annual webinars (for first two years of duty)	4,000 each year	2023/24 2024/25
Post-implementation review	25,000	2025/26
Supplier support sessions	16,500	2024/25
<b>Total programme costs</b>	<b>163,900</b>	

#### Costs to the wider public sector

367. Most contracting authorities in Wales already have procurement strategies in place. Fitness checks undertaken by Value Wales in 2014 indicated that at the time, 21 local authorities had a procurement strategy, so additional costs in this area would be fairly minimal. There would be some upfront costs in setting objectives and further developing socially responsible public procurement processes. However good practice already requires inclusion of many of these types of questions and contract conditions as tenders are advertised and awarded, and any additional time costs would largely be in the early stages as new guidance is put into practice.

368. Option 2 would place a duty on contracting authorities to produce annual procurement reports if they have awarded a 'prescribed contract'. Any additional workload here would also be minimal due to existing internal reporting around tender processes, and current reporting on the WFG Act 2015 which are likely to capture much of the data required. However, staff would be required to focus on specific outcomes which may take more time and could cause duplication of effort if not managed carefully, particularly in the first year. Annual reporting would require completion of data templates provided by the Welsh Government in statutory guidance. Any anticipated tangible costs would be incurred through Heads of Procurements' and other staff time in collating information and producing the annual report. This is set out in Table 5.5. Table 5.6 sets out estimated costs associated with objective setting and planning (drafting strategies), which is for all of the contracting authorities and not only those that carry out prescribed procurements.

369. There is likely to be a cost associated with staff attendance at awareness and training sessions, and this is set out in Table 5.7.

**Table 5.5:** costs incurred by collating data required for reporting on socially responsible public procurement outcomes

Grade	Annual staff cost <sup>88</sup> (£)	Daily rate (£) (divide by 220)	Days per year spent	Cost per annum (£)
Head of procurement (Grade 7 equivalent) x 44	86,731	394	2	34,672
Senior procurement official (SEO equivalent) x 44	66,364	302	5	66,440
<b>Total estimated cost</b>				<b>101,112</b>

370. N.B. proxy rates equivalent to Welsh Government Grade 7 and SEO are used for staff pay rates due to variances across the public sector, and differences in job titles. It is estimated that 44 contracting authorities will be required to produce annual reports, as this is the number that is likely to have carried out at least one prescribed procurement in any particular year.

371. Therefore, the estimated cost for collating data required for annual procurement reports is **£101,100** per annum (to the nearest hundred).

**Table 5.6:** costs associated with objective setting and planning (drafting strategies)

Grade	Annual staff cost <sup>89</sup> (£)	Daily rate (£) (divide by 220)	Days per year Planning/setting objectives	Cost per annum (£)
Head of procurement (Grade 7 equivalent) x 60	86,731	394	3	70,920
Senior procurement official (SEO equivalent) x 60	66,364	302	8	144,960
<b>Total</b>				<b>215,880</b>

372. N.B. All 60 contracting authorities covered by the socially responsible procurement duty will be required to set objectives and draft strategies.

373. Therefore, the estimated annual cost for drafting strategies for annual procurement reports is **£215,900** (to the nearest hundred).

**Table 5.7:** costs incurred by public sector for staff time at awareness and training sessions

<b>Grade</b>	<b>Annual staff cost<sup>90</sup> (£)</b>	<b>Daily rate (£) (divide by 220)</b>	<b>Days per year spent on training and awareness</b>	<b>Cost per annum (£)</b>
Head of procurement (Grade 7 equivalent) x 60	86,731	394	5	118,200
Senior procurement official (SEO equivalent) x 60	66,364	302	5	90,600
Procurement official (HEO equivalent) x 60	52,774	240	10	144,000
<b>Total</b>				<b>352,800</b>

374. N.B. An average is used for staff pay rates due to variances across the public sector, and differences in job titles. Figures based on the assumption that all 60 contracting authorities will require staff to attend training and awareness sessions.

375. Therefore, the estimated cost for public sector staff attending awareness and training sessions for this duty is £352,800. This cost is expected to be incurred in 2023/24.

#### Costs to the private/third sectors sector

376. Any costs incurred by the private sector may arise from increased expectation on delivering socially responsible public procurement outcomes. Examples would be wider use of sustainably sourced materials, and staff receiving more training and better terms and conditions of employment, including uplift to the Real Living Wage. Other costs may be incurred from staff time in attending additional training and support sessions that could be made available through Business Wales, for example. These costs are difficult to estimate, because it is not possible to know how many businesses currently provide goods, services or works to the contracting authorities covered by the Bill, what proportion of these would be required to focus on particular issues, to what extent they would wish to make use of available training, awareness sessions or one-to-one support, or how many employees (and at what level) would be required to attend.

377. As with Options 1 and 3, officials from Business Wales have indicated that support would be made available to help firms gear up to respond to requirements placed upon them by the socially responsible public procurement duty within the Bill. This would be free of charge to businesses and the only cost to them would be in staff time and travel for attending events. This is difficult to

estimate as costs will vary for each organisation, and the number of organisations will vary over time.

### Costs in the longer term

378. While there would be additional costs to all parties in the shorter term in adjusting to new ways of working and reporting processes, in the medium term there is potential for Option 2 to cost less than the status quo (Option 1) due to the aim of simplifying the current set of policy asks and reporting mechanisms.

### Benefits

379. The benefits associated with this option relate to a more robust process for promoting socially responsible outcomes, such as those delivered through more ethical employment practices in supply chains. This would be achieved by placing a duty on contracting authorities to have regard to statutory guidance and building in transparency and reporting requirements. A policy prioritisation tool would be needed to focus efforts where maximum value can be achieved through policy implementation. Anticipated benefits include:

- simplification of policy expectations on procurement;
- some opportunity to deliver wider social objectives as a result of greater transparency requirements;
- improvements in pay and fair work, benefiting the economy through increased tax revenues, money retained in local economies, and decreased benefits payments;
- improved transparency of supply chain activity, leading to increase in good practice and potential for interventions by commercial managers;
- better understanding of ethical employment, including sharing good practice, through an annual reporting process; and
- opportunity to improve public procurement capability to deliver improvements to public services, reduce inequalities, and deliver well-being objectives.

380. The benefits for businesses and organisations in supply chains could be significant in all respects, including financial benefits through improved productivity of staff, improved service and higher sales etc. The benefits to Wales in the long term are also impossible to quantify but are likely to be very considerable, given the scale of procurement spend within Wales each year.

**Table 5.8:** Summary of costs (rounded to the nearest hundred)

<b>Summary of costs (£)</b>	
<b>Transition</b>	
Table 5.1	37,200 – included in table 5.4

Table 5.4	163,900
Table 5.7	352,800
<b>Total transitional cost</b>	<b>516,700</b>
<b>Annual</b>	
Table 5.2	8,100
Table 5.3	303,600
Table 5.5	101,100
Table 5.6	215,900
<b>Total annual cost</b>	<b>628,700</b>

381. The estimated implementation cost for this option is therefore **£516,700**, with an estimated annual cost of **£628,700**.

### **Option 3 – preferred option – introduce new, wider legislation with a socially responsible public procurement duty plus contract management duties and mechanisms for improving compliance**

#### Description

382. Under this option, the contracting authorities set out in option 2 would fulfil the same duties described in that option, and would also be required to:

- send a report to Welsh Ministers when they do not intend to include social public works clauses in such construction contracts over £2m (including VAT) as detailed in the Bill and ensure that these clauses are applied through supply chains;
- send a report to Welsh Ministers when they do not intend to include social public workforces clauses (set out in the new Public Services and Outsourcing and Workforce Code) as detailed in the Bill and ensure that these clauses are applied through supply chains.

383. Welsh Government would be required to:

- support the Social Partnership Council's public procurement group;
- establish a new investigative power for Welsh Ministers; and
- publish model contract clauses and guidance.

384. In summary, whilst delivering the same benefits as those under option 2, this option would place additional duties on contracting authorities so as to improve the likelihood of their compliance. This option would focus attention on achieving socially responsible outcomes by including relevant clauses within contracts, passing these on through supply chains, and putting processes in place to monitor these arrangements through supply chains and report

outcomes. These plans would include an Exception Reporting process to be initiated during the pre-procurement planning phase when an organisation decides it does not intend to follow these processes for a particular procurement.

385. There will be costs associated with the Exception Reporting process. It is difficult to estimate how often an Exception Notification would be received by the Welsh Government. The primary purpose of the procurement sub-group will be to undertake an annual assessment of contracting authorities' annual reports, and the Welsh Government's draft annual report. This would be an annual process, however updates on activity would be expected at other times and papers prepared for the SPC at other stages in the annual cycle. It is not the intention that the exception notifications should be considered by the public procurement sub-group; instead, Welsh Ministers will consider and respond to such notifications directly, seeking specialist advice where necessary. Ministers will be placed under a duty to notify the SPC and its public procurement sub-group of the outcome of exception reports. We envisage that the SPC's public procurement sub-group will meet on a planned schedule in advance of SPC meetings. For the purposes of this document, we have estimated this to be three meetings per year. Costings for these are included under the Regulatory Impact Assessment costs for the Social Partnership Council. This work would be absorbed by staff dedicated to supporting options 2 and 3. This is estimated to represent half of their workload and is set out in table 5.9.

**Table 5.9 – costs arising from additional workload in considering exception notifications and associated reporting**

Grade	Annual staff cost <sup>91</sup> (£)	Cost per annum (£)
Senior procurement official (SEO equivalent) x 0.5*	66,364	33,182
Procurement official (HEO equivalent) x 0.5*	52,774	26,387
<b>Total</b>		<b>59,569</b>

\* Representing half their workload

386. Therefore, the estimated cost for considering exception notifications and associated reporting is **£59,600** (to the nearest hundred).

387. This option would also include a power for the Welsh Ministers to investigate the operation of public procurement in contracting authorities.

388. Under this option a post-implementation review would be undertaken after a period of three or four years, in order to assess whether the critical success factors are being met, and the extent to which the socially responsible public procurement duty is achieving its aims. This review would include a review of the scope of the contracts covered by the Bill.

### **Option 3 Costs**

#### Costs to Welsh Government and the wider Welsh public sector

389. Option 3 includes all of the costs set out in Options 1 and 2 above and further costs to support the additional contract management duties, Exception Reporting mechanisms, and Procurement Investigations.

390. Option 3 will include the development of two additional sets of statutory guidance, covering: the social public works clauses and accompanying guidance; and the social public workforce clauses, guidance and the new Public Services Outsourcing and Workforce Code. Table 5.1 sets out the costs of producing each piece of guidance so this would incur an additional cost of £74,400 under Option 3. In addition, we will incur some further costs in external support in the drafting of contract clauses, which we estimate will amount to £50,000 for both pieces of work. These costs are expected to be incurred in 2024-25.

#### Socially responsible contract clauses in major construction contracts and their supply chains

391. Whilst the long-term objectives are for improvements to be made in contracts across all sectors, one of the focuses in this draft Bill is on large construction contracts, with values above £2m, and the cost estimates have been calculated on this basis. This option would require an augmented approach to contract management to monitor contractor performance and compliance throughout supply chains to ensure that specific objectives are being met.

392. An increase in socially responsible public procurement would require better resourced and more robust contract management. However, the scale of this challenge is unknown across the public sector and progress will have to be made over time. Consequently, the increased costs of improved contract management more generally have not been included in this assessment. It is not possible to assess the extent to which each contracting authority included in the Bill already resources this vital function across each of its contracts; consultation has indicated that this would require augmented support over time.

393. Whilst costing contract management with any great degree of accuracy is difficult due to differences between and within organisations, Welsh Government officials have undertaken work to estimate costs for large scale, complex and high-risk projects. The costing model used provides a figure of 1-2.5% used for construction management activities within construction project



budgets, based on market research and National Audit Office figures. To allow for existing contract management arrangements, we have included a figure of 0.5% to estimated contract management costs. Contract management should be expected to be treated as a joint responsibility in many areas, and not something that can be transferred entirely (along with associated risks) to main contractors. Given that the duties will be placed on the public sector, it is suggested that 75% of this figure would fall to the public sector in increased contract management resource, and 25% to the private sector.

394. We have used this model to extrapolate potential costs for construction. This provides a reasonable approximate worst case scenario additional cost, for those organisations that are not currently including socially responsible KPIs and metrics within the regular contract management of their construction contracts. It is assumed that many bodies already include elements of this approach in their contract management processes.
395. This extrapolation is based on the proportion of spend on construction as evidenced by Contract Award Notices published through Sell2Wales, which was transposed onto actual spend during financial years 2017-2019 provided to the Welsh Government by third part spend data analyst Atamis. During 2019/20, 98.7% of the value of works contracts would have exceeded a threshold of £2m (including VAT).
396. Construction figures from Sell2Wales include framework agreement awards, which would be spent over several years as projects develop. Figures provided by Atamis indicate a total construction spend of over £2bn over the last three years, with spend during 2019/20 alone standing at £1,048,249,295.
397. The estimated annual costs incurred through strengthened contract management in construction is £5,173,100 (to the nearest hundred). The actual costs would rely largely on factors such as how contract management is risk assessed and structured within each relevant body, use of existing frameworks, staff capacity and capability, whether contract management is outsourced etc.
398. We have used a baseline percentage for contract management costs based on figures provided by market research and the National Audit Office. The increased figure for our Bill was arrived at by adding 0.5% to the value of construction spend over the £2m (including VAT) threshold. We know from spend data provided by Atamis that the Welsh public sector (excluding those sectors not caught by the procurement duties) spent £1,048,249,295 on construction in 2019/20 alone. We also know from Sell2Wales that 98.7% of construction contracts advertised exceed the £2m (including VAT) threshold, leading to the extrapolation that £1,034,622,054 worth of contracts would be caught by the contract management duty. The £5,173,100 is therefore arrived at by increasing this by 0.5%. We know that the primary focus for site managers in supply chain management is on time, cost, quality and health and safety. Under this legislation they will be required to consider due diligence on a range of other subjects (environmental and compliance with employment law for example), some of which not common practice at the moment, which is why we anticipate a significant increase in contract management costs.

## Two-Tier Workforce code

399. There is potential for further costs associated with Exception Reporting on the application of Two-Tier Workforce Code. There are very few instances each year of an organisation covered by the existing Two-tier Code outsourcing a service, and the Code is normally applied in these circumstances. The costs of this process are included within the Exception Reporting provisions described above and the costs below. There could be some higher employment costs associated with a more careful monitoring of the on-going application of the Code's contractual provisions, but as this Code is already in place in Wales, it is difficult to estimate the scale of divergence from its provisions.

## Costs to the private/third sectors

400. The extent to which businesses would be affected by the socially responsible public procurement duty under the Bill will depend on the extent to which socially responsible outcomes are already built into public sector contracts and supply chains. It will be important to pay close attention to minimising additional burdens on business, particularly small businesses and third sector organisations. Working alongside the UK Government on wider procurement reform will also allow us to make use of common systems which will minimise additional bidding and contract management costs for suppliers.

401. Support would be made available through the Welsh Government's flagship Business Wales programme to help businesses gear up for any changes made as a result of the socially responsible public procurement duty. Staff would work with Business Wales to ensure that businesses are able to mitigate potential impacts whilst maximising opportunities for delivering Social Partnership objectives.

402. Another area of cost is contract management. The costs referenced above of £5,173,100 could be shared between clients and the private sector, and the split would vary for each organisation based on a multitude of factors such as risk management appetite, maturity of the commercial function, resource available, budgets, and contract terms. The percentage split of construction costs between the public and private sectors is difficult to accurately estimate as this will depend on each public body's approach to contract management. Given that the procurement duties will be placed on the public sector, we are assuming that 75% of the construction management figure would fall to the public sector in increased contract management resource, and 25% to the private sector. This equates to annual costs of £3,879,825 for the public sector and £1,293,275 for the private sector.

403. Audit of supply chain behaviours would also need a new approach by both contracting authorities and the private sector. We are working with construction industry representatives to identify how this can be progressed with minimal impact on cost and administrative burden. This may be an area where allowing for third-party accreditation could present the optimal solution, such as the approach already established in health and safety. This would mean additional

cost sunk into contract delivery and/or tendering processes, which is unquantifiable at this time.

## Benefits

404. This option includes Option 2 and as such it would introduce a lens through which any new policy outcomes to be delivered through public procurement in future are assessed for inclusion in statutory guidance. Many of the policies that will be covered by statutory guidance are already well-established and so this option may not represent a significant change in direction for public procurement practitioners, although there will be areas for development particularly around fair work and environmental objectives. It represents a change to simplify existing commitments and introduce a process by which new objectives are considered for inclusion in future in the context of Social Partnership.
405. Because of the anticipated need for forward procurement planning and establishing a basis in law for utilising the leverage of public procurement to deliver policy outcomes, this would help make public procurement a strategic function, which is a stated ambition of our stakeholders.
406. This would give the profession a more robust role in policy delivery and scrutiny, in line with feedback from stakeholders, and a specific recommendation by the 2012 McClelland Review Maximising the impact of Welsh Procurement Policy<sup>92</sup> for a “mandatory duty for funded bodies to adopt Welsh Government procurement policy [which] should include delivering the wider benefits of economic, social and environmental impacts.” This recommendation has been reiterated in several more recent reports.
407. Option 3 would give procurement more leverage to help deliver against the Economic Action Plan, the decarbonisation agenda and the well-being objectives of public bodies under the WFG Act 2015.
408. Benefits associated with statutory guidance as set out in option 2 would also arise.
409. The proposed contract management duties would represent the first time in the UK that such duties are placed on a statutory footing. It would, when in steady state, greatly reduce some of the risks posed by lack of transparency within supply chains. It would also give contracting authorities greater ability to investigate supply chain behaviours. This would benefit private/third sector suppliers by giving greater confidence that they, and their competitors, will be held to agreed contractual obligations.
410. This option would also place the Workforce (Two-tier) Code of Practice on a statutory footing for the first time, which would ensure that contracting authorities are required to comply with the duties under the Bill.

411. Data driven outcomes derived from the annual reporting process and the new feedback service would provide evidence of public procurement’s ability to deliver tangible, real-world benefits to Welsh citizens and the economy and provide a valuable baseline from which to assess the public procurement landscape within Wales.

412. For example, a reasonable expectation of improved socially responsible public procurement would be an increase in spend with Welsh SMEs, reduced emissions through supply chain activity and increased delivery of well-being outcomes through commercial activity.

413. The proposed Annual Report to be prepared by the Welsh Ministers could be used to establish critical success factors for the continuous improvement of public procurement in Wales. These would be used to determine policy intervention areas that could be proposed by the Welsh Government and overseen by the Social Partnership Council. As well as providing shorter-term areas for development in individual contracting authorities, these could provide an evidential basis for the development of longer-term policy priorities to be taken forward by Welsh Government.

414. Similarly, spot checking undertaken by the new feedback service would help ensure that policy is being implemented effectively and also drive appropriate interventions.

**Table 6:** Summary of costs for Option 3

<b>Summary of costs (£)</b>	
<b>Transition</b>	
Table 5.1	37,200 – included in table 5.4
Table 5.4	288,300*
Table 5.7	352,800
<b>Total transitional cost</b>	<b>641,100</b>
<b>Annual</b>	
Table 5.2	8,100
Table 5.3	303,600
Table 5.5	101,100
Table 5.6	215,900
Table 5.9	59,600
Construction contract management costs	5,173,100
<b>Total annual cost</b>	<b>5,861,400</b>

\*includes two additional pieces of guidance under Option 3 plus £50,000 for costs associated with drafting of clauses

415. The estimated implementation cost for this option is therefore **£641,100**, with an estimated annual cost of **£5,861,400**.

### Preferred Option

416. Option 3 delivers the most benefits, with mechanisms for measuring and reporting on outcomes, and for driving compliance. As Option 3 contains Option 2, it also has the same benefits compared with Option 1 overall, due to the potential for simplifying existing commitments and reducing overlap. The Welsh Government costs for Option 2 are largely covered by existing budget planning by Welsh Government's Commercial Procurement Directorate, with additional costs incurred from consequential impacts in extra work for contracting authorities. However, it should be noted that coordinating the reporting cycle and information with that required under the WFG Act 2015 has the potential to reduce this figure. Option 1 maintains the existing level of policy engagement but misses a significant opportunity to place necessary changes on a statutory footing, to provide real cohesion between policy areas that are closely related and to focus more attention on outcomes.

417. Most of the additional administrative burden for contracting authorities and any associated costs would arise from following good practice, much of which is already set out in guidance, and undertaking due diligence associated with ethical business practice. This will particularly be the case once the statutory guidance is established. It is difficult to assess the extent to which this is not happening at present, and therefore to calculate potential additional costs.

418. The statutory guidance arising from the socially responsible public procurement duty and all available policy support mechanisms would go as far as possible to minimise workload and duplication for business, and particularly SMEs.

419. Option 3 would promote compliance with the socially responsible public procurement duty through scrutiny of, and eventual public exposure of any organisations repeatedly failing to comply with the general procurement strategy and reporting duties, and exception reporting about cases where organisations are not including socially responsible contract clauses, or managing supply chains and contracts sufficiently.

## Chapter 9 Impact assessments

### Children's rights impact assessment

420. Although a full impact assessment was not carried out because it was decided at this point impacts could not be measured, the Bill is committed to measuring the impacts on children's rights following Bill implementation through evaluation of reporting mechanisms in the Bill.

421. The amendment to the WFG Act 2015 means those subject to the Act will need to consider how fair work can contribute to their well-being objectives in general and their pursuit of the "A Prosperous Wales" well-being goal in particular. This will only have an indirect impact on children below the age of 16. There is potential for direct impact on 16-18 year-olds who are in work or who are seeking work. This is because those public bodies subject to the WFG Act 2015 will consider what activity they can take to promote fair work in the pursuit of the well-being goals. This could include activity which contributes to efforts to tackle in-work poverty and the impact that has on child poverty. In addition, it could lead to the promotion of more worker centered flexibility that improves the capacity of workers to combine work with caring responsibilities for children.

422. The socially responsible public procurement duties will increase due diligence in contracting authorities' supply chains across Wales. This will include a focus on addressing risks of child labour and exploitation in supply chains, including those extending overseas. Whilst this will have a positive impact, the extent of this is unquantifiable at this point because it is impossible to know to what extent the duties will prevent the continuation of existing exploitation.

### Equality impact assessment

423. The amendment to the WFG Act 2015 means those bodies subject to it will need to consider how fair work can contribute to their well-being objectives in general and their pursuit of the "A Prosperous Wales" well-being goal in particular. In this context, the consideration of fair work can involve wide-ranging action across a broad spectrum of areas, including workforce equality, diversity and inclusion. Organisations may therefore consider, among other things, further activity designed to address under-representation, improved reporting of gender, race and disability pay gaps and delivering steps to narrow and eliminate those gaps. Such action would also be in line with the National Milestone in relation to "an elimination of the pay gap for gender, ethnicity and disability by 2050."

424. The social partnership and public procurement duties will provide an opportunity for involving people with protected characteristics in order fully to consider equality, diversity and inclusion at design stage. For the public procurement duty this will happen before a procurement is carried out, during a

procurement exercise, for example in addressing unconscious bias, and also in measuring outcomes, for example pay gaps, where appropriate. The contract management duty for major construction contracts has the potential to have a positive impact on those with protected characteristics. It will require authorities to embed (and monitor performance against) contract clauses throughout entire supply chains that will provide employment opportunities to younger people, older people, the long term unemployed, people with disabilities or people who are otherwise disadvantaged. The annual reporting process for all duties in the Bill will allow any measurable benefits, for example through use of the Community Benefits measurement tool, to be reported in relation to impacts on those with all protected characteristics.

### **Health Impact Screening Tool**

425. There is no direct impact on people's health is envisaged to arise as a result of these proposals. However, social partnership and fair work can help create healthy working environments. These changes are an outcome of the WFG Act 2015 which requires certain public bodies in Wales to think about the long-term impact of their decisions, and to prevent persistent problems such as health inequalities.

426. Unfair work can have a detrimental impact on physical and mental health, whilst conversely fair work can have positive health benefits. All workers have the right to be safe and healthy at work and as part of our approach to fair work, we recognise the importance of workers receiving appropriate information, advice and training provision and ensuring worker voice is heard so that employers make appropriate adjustments. The Bill will help encourage public bodies to consider such issues.

### **Justice Screening Tool**

427. A full Justice Impact Assessment has been undertaken, the conclusion of which is:

- Cases of litigation linked to this Bill are likely to be few as the enforcement measures within the Bill are focused on transparency and openness opposed to sanctions.

However;

- There is potential for litigation to arise under the requirement for "certain public bodies to carry out contract management duties to ensure that socially responsible outcomes are pursued through supply chains".
- In all of these areas existing measures are in place through various enforcement bodies which exist for this purpose.
- Cases are not likely to increase significantly as a result of this legislation, the purpose of which is to increase transparency and therefore to act as a

deterrent to organisations that may try to hide non-compliant practices in public sector supply chains

428. The Bill does not create or modify criminal offences or impose any system of civil enforcement. The only litigation capable of being generated is judicial review of public bodies who are subject to requirements under the Bill. Therefore, the number of court cases likely to be generated by the Bill is minimal.
429. The only legal mechanism of enforcement will be via judicial review. Various other forms of non-legally binding enforcement will be provided for by the Bill itself (e.g. reporting requirements) but none of these will have an impact on the justice system.
430. The statutory social partnership arrangements that the Bill creates will enable 'self-policing,' transparency and scrutiny as the main driver of compliance. The Social Partnership Council will advise the Welsh Ministers on the exercise of the social partnership and socially responsible public procurement duties. It is theoretically possible that, in relation to procurement matters, the SPC could discover incidents of unlawful practice and enforcement which might then result in litigation. However, such litigation would be detection of existing wrongdoing rather than the creation, through legislation, of new possibilities for litigation which would, in turn, increase the burden on the justice system. In any event, the impact on the justice system of such detection, even if it were to occur, is likely to be very small.

### **Welsh Language impact assessment**

431. A thriving Welsh language and cohesive communities are among the goals under the WFG Act 2015.
432. The Bill helps promote and have a positive impact on the Welsh Language and Culture through social partnership by encouraging cooperation between employers and trade unions, within organisations, within sectors and with Government, on workforce matters. This could include promoting and facilitating the use of the Welsh language in the workplace and in the delivery of our public services. Many of the bodies subject to the duties in the Bill are also subject to the Welsh Language Standards, which were introduced under the Welsh Language (Wales) Measure 2011. The Bill will not affect the need for bodies to comply with the Standards.
433. Respondents to the White Paper considered that the proposals could have a positive, rather than negative, impact upon the Welsh language and would expect the Welsh language to be part of effective collaboration and partnership working which Bill seeks to bring about.
434. Statutory guidance supporting the public procurement duties in the Bill will also provide an opportunity for embedding best practice in developing



specifications and designing procurement exercise to have a positive impact on increasing use of the Welsh language. Opportunities for collecting and reporting data on Welsh language through procurement will be investigated, and, along with sharing of case studies will help to extend best practice – in particular in areas where data suggests that limited capacity and capability causes problems.

435. By upskilling Welsh speakers and providing procurement guidance and documentation bilingually we will contribute to development of a more consistent, standardised procurement infrastructure that delivers improved public procurement practice.

436. Promotion of the Welsh language will be considered under the cultural and economic categories within the socially responsible public procurement duty.

### **Biodiversity Impact Assessment**

437. Having considered the proposals against the priorities of the Natural Resources Policy, a potential positive impact is identified.

438. A full assessment of the impact that procurement can have on biodiversity has recently been completed in relation to the Welsh Government's Nature Recovery Action Plan<sup>93</sup>. This states 'we will strengthen our current approach to the use of the Sustainable Risk Assessment (SRA), where as part of the procurement planning process, practitioners are encouraged to consider – and record any decisions – around their impact on biodiversity, including how and from where materials are sourced. Our approach emphasises the importance of the SRA as a tool for sustainable procurement and development, embed training, guidance and support for practitioners in its use, and utilise the planned fitness checks program to monitor usage and performance'.

439. We will also reiterate and support best practice in environmentally sustainable procurement through our statutory guidance. Expert advice will be sought as guidance is produced to ensure that the latest policy developments and tools are reflected in it. The annual reporting process in the Bill will ensure that relevant metrics are collected and reported.

440. The Bill provides for the inclusion of socially responsible contract clauses construction contracts with estimated value above £2m (inclusive of VAT). The bill includes categories within which these clauses will fall and Category 6 is described as "requiring sustainable management of natural resources, reduction of greenhouse gas emissions, and protection or enhancement of the natural environment and biodiversity". It is worth noting however that the precise wording of this clause is under review at the time of writing. Clauses will be included in statutory guidance.

441. This duty requires authorities undertaking works projects above this threshold to notify Welsh Ministers if they do not intend to include these clauses. The rationale provided will be assessed and further action may be taken by Ministers.

442. Annual reporting requirements within the procurement duties in the Bill will allow data to be collected and analysed from the Welsh public sector, in order to monitor outcomes in relation to policy expectations. If areas of particular weakness are identified the Bill gives Ministers powers of investigation, allowing further information to be requested, and action taken.

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## Chapter 10 Competition Assessment

443. At present, UK procurement law is derived from direct transposition of EU Directives, which is intended to open up markets. This law has been amended by the EU Exit Statutory Instrument and is in the process of being further reformed by the UK Government. In the Welsh context, the public procurement landscape is also underpinned by the Wales Procurement Policy Statement, which provides ten principles for procuring well-being which include (amongst other things):

- Leveraging collaborative procurement to maximise long-term sustainable social and economic value outcomes
- Raising the standing and profile of the procurement profession
- Prioritising carbon reduction and our ambition for a net zero public sector
- Supporting the development of the foundational and circular economies
- Promoting equal opportunities and fair work
- Improving the integration and user experience of digital solutions.

444. As well as supporting this policy statement, the public procurement duties within this Bill aim to exploit the leverage offered by the commercial activity in Wales to support both national and local economic development, to simplify the private sector's experience of dealing with public procurement and support small businesses in order to deliver well-being outcomes and improve public services. The Welsh Government's Competition Assessment guidance includes a filter test. The following questions are most relevant in this context. Answers are included.

*A: would the costs of the regulation affect some firms more than others?*

445. Adoption of the preferred option would strengthen good practice in public procurement, reducing bureaucracy and duplication in the procurement process and increasing transparency and simplicity which should make it easier for suppliers to compete. It should also create a more certain environment, which reduces risk for business, and improves competitiveness as a result of contractual standards being enforced through contract management. If applied correctly, the measures within the Bill should help Welsh firms to become more competitive.

*B: is the regulation likely to affect the market structure, changing the number or size of firms?*

446. The Bill does not alter the important principle of open, transparent and accessible competition that underpins the Welsh public procurement landscape. This forms part of the regulations governing procurement processes

themselves, which are currently set out in the Public Contracts Regulations 2015 and Utilities Contracts 2016 and Concessions Contracts 2016 Regulations. This legislation is currently being reformed by the UK Government and will cover Welsh contracting authorities.

*C: would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?*

447. These duties do not apply directly to suppliers. Care will be taken when developing statutory guidance to ensure an approach that would not affect small businesses disproportionately.

*D: would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?*

448. It is important to note that this legislation does not act on suppliers directly; the intention is that proportionality will be built into the statutory guidance that supports this Bill so that the expectations placed on smaller entrants are reasonable

### **Cross border issues**

449. Whilst there is some scope for cross border concerns as a result of this legislation, they are not likely to be significant when these duties are applied, because the same requirements would be placed on all bidders regardless of where they are based. For larger businesses or those operating across borders, different requirements may be placed on them by contracting authorities in Wales compared with those in England but that is already the case to some extent.

450. Other than in cases where significantly greater due diligence is being placed on supply chain transparency and the maintenance of standards of socially responsible public procurements, this should not have significant cost implications for businesses overall, and smaller businesses would have a choice over whether to accept the requirements and compete for a contract.

451. It should be noted however, that although the introduction of new processes for ensuring flow through of contract clauses and additional due diligence and more robust contract management arrangements would of course incur short term administration and cost burdens to some extent, in the medium to long term these would help make Welsh firms more competitive in bidding for both Welsh and also UK public contracts.

### **Thresholds of application**

452. Careful consideration has been given to the application of thresholds for regulated public procurement in the Welsh context. It is important to ensure that any thresholds are proportionate and achievable because contracting authorities would have less control over, and management information about, contracts below a certain level. Also, it is disproportionate to ask for in-depth

assessments to be made on low-value contracts where the bureaucratic burden would outweigh potential benefits. Moreover, if thresholds are set too low, authorities may be required to ask SMEs to respond to tendering exercises that are disproportionately time-consuming and expensive, and to deliver outcomes that are unrealistic. Existing data suggests that Welsh businesses, many of which are SMEs, currently win around 52% of public contract spend. However, this figure is based on the postcode of the invoice addresses and may not reflect an accurate picture. SMEs also represent a huge part of the Welsh economy (accounting for 62.4% of employment and 99.4% of total enterprises in Wales in 2019), with micro SMEs (businesses with nine employees or fewer) accounting for 33.4% of employment alone.

453. If future post-implementation reviews indicate that either opportunities are being missed, or a disproportionate impact is being experienced by SMEs or specific sectors as a result of thresholds, provision has been made for Welsh Ministers to amend the respective thresholds accordingly.

454. In order to simplify requirements on Welsh contracting authorities, it is proposed that the thresholds applied in this Socially Responsible Public Procurement Duty are set in regulations and linked with thresholds that are already familiar to the organisations concerned for supplies and services. Current thresholds vary according to the types of contracting authorities and market sectors. These thresholds are derived from the World Trade Organisation’s Government Procurement Agreement (GPA), which is amended every two years. They will continue to follow the GPA and reviewed every two years. As of January 2020, they are as follows (these figures have been rounded):

**Table 6:** Thresholds of application of the Public Contracts Regulations 2015

<b>Body type</b>	<b>Threshold for Supplies or Services Contracts (£)</b>	<b>Threshold for social and other services (light touch regime) (£)</b>
Central Government Bodies (those bodies covered by WTO GPA)	123,000	664,000
Other public sector organisations (such as local government)	189,000	664,000
Utilities	379,000	885,000

455. The Bill defines a category of contracts known as “prescribed contracts”. These will effectively be outsourcing contracts of any size, large construction-related (works) contracts, and procurements for suppliers and services above a threshold set in regulations. The UK Government has increased the figures above to account for VAT.

456. The intention is to keep the thresholds in this Bill as simple as possible and link them to existing procurement-related thresholds used. For construction contracts the £2m (including VAT) threshold has been included, which is the same as the threshold in Scotland, albeit with an adjustment for VAT) and also corresponds to a threshold used in Wales for the application of community benefits clauses in construction contracts. This lower threshold, compared with that set within the GPA, is due to the importance of addressing socially responsible public procurement in this sector. This is because it represents a large proportion of public expenditure. Supply chains are long and complex, and it is often the smaller organisations further down supply chains that have the biggest impact on socially responsible outcomes.

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## Chapter 11 Post Implementation Review

457. The Welsh Government is committed to monitoring and reviewing the implementation of this Bill, and the impacts of its provisions in the post implementation period. In accordance with the Bill's provisions, the Welsh Ministers will lay before the Senedd a report on the operation and effect of the Bill at the end of a five-year period. This will include a formal evaluation using existing data and bespoke approaches to evaluation by externally commissioned researchers.
458. As part of the consultation process, government analysts from Knowledge and Analytical Services (KAS), Welsh Government, were tasked with producing a theory of change as a basis for an ex-ante evaluation of the Bill. In developing the theory of change both internal Welsh Government officials and relevant external stakeholders will participate in a series of three workshops. The workshops will each cover the four main components of the Bill: social partnership, the Social Partnership Council, socially responsible public procurement and to a lesser extent, fair work. During the workshops, participants will provide their views on the agreed outcomes of the Bill, the risks and unintended consequences of the proposed interventions and ways to evidence these outcomes.
459. From the three workshops, four logic models will be produced. Each logic model will represent the intervention logic for the aforementioned components of the Bill, with illustration of the interrelationship between them. It is anticipated these logic models will be used as a basis for external evaluators to design a mid-term or final evaluation of the Bill during the post implementation period.
460. Findings from the theory of change will be published in a report on the Welsh Government's statistics and research webpages in summer 2023. Authored by social researchers in KAS, the report will include the completed logic models, suggestions around the use of data metrics to evidence the Bill's anticipated outcomes, and recommendations on evaluating the Bill's implementation and effectiveness. A full methodological design for post implementation evaluation work will be confirmed by the appointed contractors in due course, once the Bill's details and its implementation are confirmed.
461. The amendment to the WFG Act 2015 goals, to include a reference to fair work, means the evaluation framework set-up under that Act can be used to review how effectively organisations are carrying out the well-being duty in line with the revised goals through national indicators of well-being. These indicators can measure progress toward the well-being goals at a national level and can also be disaggregated to measure progress toward well-being objectives at a local level. Reporting mechanisms for the SP and Public Procurement duties will also consider progress around maximising contribution to the revised well-being goals, with the data reported under both pieces of legislation shared to help strengthen evaluation. Under the SP Duty, this will involve public bodies reporting annually to the SPC detailing how they have complied with the social partnership duty, which will be submitted to the SPC, for scrutiny. For public

procurement, socially responsible outcomes (including fair work) are linked to the WFG Act 2015 goals and are central to procurement strategies and processes.

## Data and Statistics

462. Each of the main components of the Bill are interrelated and this will be reflected in a degree of crossover in the content of the four logic models. For example, whilst the goals for social partnership and socially responsible public procurement are ends in themselves and have their own specific outcomes, they also contribute towards improving fair work outcomes. There will also be crossover between the SPC and social partnership models, though a focus on the SPC within the theory of change analysis will be around its function in driving key changes anticipated as a result of the Bill.

463. It is anticipated some of the outcomes detailed in the theory of change, for example around social partnership and behavioural and cultural change, will be best measured using qualitative approaches. This will be explored in more detail at the mid-term or final stage evaluation phase and could involve, for example, using the method of focus groups and/or case studies to collect data.

464. Research with the public, private and third sector will also be undertaken in the future to further understand how social partnership is understood and enacted within these sectors. Future research would also measure how the implementation of the Social Partnership Duty and Social Partnership Council has progressed following the implementation of the Bill. External factors will need to be considered when assessing the impact of the Social Partnership Duty and SPC on achieving the fair work objectives.

465. Assessment of the Bill's impact on achieving the outcomes for socially responsible public procurement could be drawn from a range of sources, including:

- Procurement advertisement platforms, such as Sell2Wales, All Wales Procure to Pay (NHS), and other equivalents for different sectors
- Local Authority performance and improvement data
- Transparency in Supply Chains (TISC) Platform.

466. Options for developing existing and new digital solutions for procurement and contract management are currently being considered by Welsh Government. This also links with the UK Government's procurement reform plans. Identifying and developing digital solutions will take time. The first step is identifying the data which needs collecting.



467. KAS will make suggestions on which data can be drawn from which sources in the Theory of Change report. Supplementary data would also be collected as part of a formal evaluation.

### **Formal Evaluation**

468. As a systematic approach to developing evaluation projects, an evaluability assessment could be undertaken as an early step in the post implementation review process. Building on the theory of change analysis, an evaluability assessment would establish the likelihood of measurable impact in the areas of interest before resources are committed to a full-scale evaluation. The assessment would include initial baseline information from a review of existing data sources and recommendations for and against different evaluative approaches, based on evidence requirements.

469. It is anticipated both an impact evaluation and a process evaluation, focusing on the implementation period, will be undertaken by external contractors. The latter may take the form of a mid-term evaluation at an appropriate point in the first five years of the life of the Bill once enacted. KAS will suggest an evaluation timetable with the full details of an evaluation methodology proposed by the appointed researchers at a later date. The evaluation of impact will draw upon administrative data, data collected via the new reporting requirements established by the Bill, and a suite of bespoke evaluation methods. It is expected a baseline phase will be undertaken to provide 'before' data by which progress can be measured, as well as an assessment of the external factors which may impact on high-level measures and the level of attribution of the Bill.

## **Annex 1.**

### **Explanatory Notes**

# **SOCIAL PARTNERSHIP AND PUBLIC PROCUREMENT (WALES) BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes are for the Social Partnership and Public Procurement (Wales) Bill as introduced to Senedd Cymru on 6 June 2022.
2. They have been prepared by the Social Partnership and Fair Work Directorate of the Welsh Government to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by the Senedd. The notes should be read in conjunction with the Bill but are not part of it.
3. The notes are not meant to be a comprehensive description of the Bill. Where a section or part of a section is self-explanatory and does not seem to require any further explanation or comment, none is provided.

### **GENERAL OVERVIEW OF THE BILL**

4. The Bill provides for a framework to promote the well-being of the people of Wales by enhancing sustainable development (including by improving public services) through social partnership working, promoting fair work and socially responsible procurement.

### **PART 1**

#### **THE SOCIAL PARTNERSHIP COUNCIL**

##### **Section 1 – Social Partnership Council for Wales**

5. Section 1 establishes the Social Partnership Council for Wales (“SPC”) and describes its core function together with the purposes for which it may exercise that function.
6. The SPC’s core function is to provide information and advice to the Welsh Ministers on certain matters. This function is wider than merely advising the Welsh Ministers and could include the creation or provision of, among other things, statistics, factual summaries, copies of documents (whether publically available or otherwise) and so on. There is no explicit restriction on the type of information or advice that the SPC can provide.

7. The purposes for which the SPC may provide information and advice to the Welsh Ministers are to enhance the four types of well-being (economic, environmental, social, and cultural) promoted by the Well-being and Future Generations Act (Wales) 2015 (“the 2015 Act”). A key element of this is adopting social partnership principles to improve public services in Wales. These purposes are deliberately broad to reflect the wide range of topics the SPC will discuss.
8. The SPC may provide information and advice on, essentially, those matters dealt with by the Bill:
  - (a) the social partnership duties under Part 2 of the Bill;
  - (b) the pursuit of the “A Prosperous Wales” well-being goal by public bodies when carrying out sustainable development under the 2015 Act;
  - (c) the functions conferred on contracting authorities and the Welsh Ministers under Part 3 (socially responsible procurement).

In relation to (b), the SPC’s remit includes the “pursuit” of the “A Prosperous Wales” goal by all bodies required to carry out sustainable development under section 3 of the 2015 Act. For example, the SPC would be able to provide information or advice to the Welsh Ministers about activity they were taking to improve the economic wellbeing of Wales if that activity was linked to the “A Prosperous Wales” goal.

9. The Bill provides for flexibility as to how SPC advice is instigated (it can be initiated by either the SPC itself or the Welsh Ministers). The SPC is therefore able to act on its own initiative if it becomes aware of a topic in relation to which it determines it should provide information or advice. Where information or advice is requested from the SPC by the Welsh Ministers, it must be provided as soon as reasonably practicable.

## **Section 2 – Membership of the Social Partnership Council for Wales**

10. Section 2 provides that the SPC will ordinarily be chaired by the First Minister of Wales and consist of three types of members – Welsh Government members (who could be any of the Welsh Ministers or Deputy Welsh Ministers, the Counsel General or any member of staff of the Welsh Government), nine representatives of employers in Wales and nine representatives of workers in Wales.
11. There is no numerical limit on the number of Welsh Government members of the SPC which will allow for different individuals to attend the SPC at different times. Which individuals act as Welsh Government members at a particular meeting of the SPC is to be determined by the First Minister.
12. Both the employer and worker representatives will be appointed by the First Minister. The fact that there will be an equal number of employer and worker representatives reflects the collaborative nature of social partnership and the equality of employer and worker stakeholders in the process of advising the Welsh Ministers.
13. Section 2(4) requires the First Minister to take all reasonable steps to appoint nine employer and nine worker representatives within six months of section 2(4) itself coming into force.

14. Section 2(5) provides that the SPC is a collective group that can only act jointly in its functions. Therefore, members cannot individually perform the functions of the SPC, this must be done as a collective group. This approach reflects the collaborative nature of social partnership.

### **Sections 3 and 4 – Employer and worker representatives**

15. These sections make provision about who can be appointed as an employer or worker representative by the First Minister. Employer representatives must be individuals that the First Minister considers represent certain categories of employer in Wales. Worker representatives must be individuals the First Minister considers represent staff working for employers in each of those categories in Wales.
16. The First Minister’s discretion in appointing individuals is broad in that the only requirement for appointment is that the First Minister has formed a view that a particular individual represents relevant organisations or staff (as the case may be). However, this discretion is, in practice, significantly curtailed by the nomination process contained in section five.
17. Employer and worker representatives carry out their role as individuals, regardless of their connection with any organisation external to the SPC (e.g. a public body or a trade union).
18. It is intended that employer and worker representatives will be able to represent a wide variety of constituencies and perspectives.

### **Section 5 - Nomination of appointed members**

19. Section 5(1) provides that, before appointing employer representatives the First Minister must seek nominations from organisations the First Minister considers represent the views of each category of employers to be represented by employer representatives. However, the First Minister is not obliged to accept nominations for employee representatives and may appoint one or more individuals not so nominated.
20. The First Minister must have regard to any nominations made when appointing employer representatives. This will ensure that a wide range of organisations in both the private and public sectors can influence the appointment of employer representatives to the SPC.
21. Section 5(2) provides that before appointing worker representatives, the First Minister must seek nominations from Wales TUC Cymru.
22. The First Minister may only appoint worker representatives who have been nominated by Wales TUC Cymru. This will ensure that worker representatives are genuinely representative of the collective experience of the workforce.
23. However, the First Minister is not obliged to appoint all or any individual nominated by Wales TUC Cymru to be a worker representative. Therefore, the First Minister could decide not to appoint one or more Wales TUC Cymru nominees and ask for others to be nominated.

24. The intention is create a diverse group by providing for a wide range of employers and workers to be represented on the SPC.

### **Section 6 - Duration of appointments**

25. This section provides that employer or worker representatives are appointed for three years unless either the First Minister terminates their appointment or they resign by notifying the First Minister.
26. The legislation does not prevent the First Minister re-appointing an individual to the SPC or representatives serving consecutive terms.
27. The section also requires that the First Minister must fill any representative vacancy as soon as reasonably practicable. This provision will minimise disruption to the work of the SPC and ensure that, as far as possible, numerical parity is maintained between employer and worker representatives.

### **Section 7- Meetings, procedures and administrative support**

28. This section deals with the operation of the SPC. It specifies certain procedures – the frequency of meetings, the chairing of the SPC by the First Minister where possible and arrangements where this is not possible. In circumstances where the SPC is not to be chaired by the First Minister, the SPC will be chaired by another Welsh Minister or Deputy Minister nominated by the First Minister.
29. It also requires that the Welsh Ministers specify and publish all other procedures to be followed by the SPC (including a quorum for SPC meetings within six months of section 7(4) coming into force). The publishing of the SPC's procedures will ensure the greatest possible transparency. The Welsh Ministers may, having consulted with the SPC, amend any of the procedures they have specified and any amendments must be published.
30. The section also specifies certain kinds of procedures that must be published under the section and requires the Welsh Ministers to provide administrative support to the SPC.
31. The intention is to provide for a basic framework of procedures without being so prescriptive as to impair the flexibility of the SPC's work.

### **Section 8 – Subgroups**

32. Section 8 provides the SPC with the power to create subgroups to carry out its functions or assist it in doing so. Each subgroup must be chaired by a member of the SPC but may include both SPC representatives and other individuals as members. A subgroup may only exercise functions or aspects of functions that have been delegated to it by the SPC. There is no limit to the number of subgroups the SPC may create.
33. The possibility of including non-SPC representatives as members of subgroups will allow subgroups to draw on the maximum possible range of expertise and knowledge. Among other things, subgroups could be used by the SPC to ensure its functions are carried out more efficiently, to provide advice to the Welsh Ministers on a discreet issue or to ensure that its functions can be carried out in the periods between meetings of the full SPC.

34. Although a subgroup will only be able to exercise those functions delegated to it by the SPC, there is no restriction on which functions of the SPC can be delegated. As a result, SPC subgroups may produce information or advice to the Welsh Ministers in much the same way as the SPC itself (provided the relevant functions have been properly delegated).

### **Section 9 – Public procurement subgroup**

35. This section requires the SPC to take all reasonable steps to establish a specific subgroup concerned with public procurement within six months of section 9(1) coming into force. It further requires that the Welsh Ministers specify and publish the quorum for the public procurement subgroup meetings and the procedures to be followed during such meetings in so far as they are not specified in the Bill.
36. The section also requires the same types of procedure that must be specified and published in relation to the full SPC to be specified in relation to the public procurement subgroup, and that procedures for the subgroup can be revised in the same way as SPC procedures. The intention, as with the SPC, is to balance consistency with flexibility.
37. As with other subgroups, the members of the public procurement subgroup may consist of both members from the SPC and other individuals but must be chaired by a member of the SPC.

### **Section 10 - Provision of information and advice to the SPC by public procurement subgroup**

38. This section provides that the public procurement subgroup will be able to provide information or advice to the SPC about the functions placed on contracting authorities and the Welsh Ministers under the socially responsible procurement duties set out in Part 3 of the Bill. If the Welsh Ministers request information or advice from the SPC about such matters, the SPC must seek this from the public procurement subgroup (unless the subgroup has not yet been established) and provide it to the Welsh Ministers as soon as reasonably practicable.
39. In addition, this section provides for the revision of information and advice by the SPC, before it is sent to the Welsh Ministers.
40. Where the Welsh Ministers consult the SPC subgroup under sections 30 or 36 of the Bill, the public procurement subgroup must provide information and advice that it considers appropriate as soon as reasonably practicable.
41. Welsh Ministers may order the SPC to request information or advice from the public procurement subgroup, or Welsh Ministers may go directly to the public procurement subgroup for information or advice to assist with the exception reports process. If requested by Welsh Ministers, the SPC or the public procurement sub group are required to provide the information or advice as soon as reasonably practicable.

### **Section 11 & 12 – Meeting remotely and Expenses**

42. Section 11 allows the SPC or an SPC subgroup to hold meetings via the internet or telephone. This provisions will increase the flexibility of the SPC and enable it to carry out its functions effectively.
43. Section 12 enables the Welsh Ministers to meet the expenses of SPC employer and worker representatives as well as members of subgroups. Such payments would be subject to any relevant policies or procedures put in place by the SPC or the Welsh Ministers.

### **Section 13 – Supplementary powers**

44. This provision provides the SPC with supplementary powers related to improving the effectiveness of its functions or the functions of a subgroup. The nature of the SPC's work means that it may be useful for it to engage in activities ancillary to its main functions.

## **PART 2 – SOCIAL PARTNERSHIP AND SUSTAINABLE DEVELOPMENT**

### **INTRODUCTION**

45. Section 2 of the 2015 Act defines “sustainable development” as the process of improving the economic, social and environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals set by the Act. Section 3 of the 2015 Act requires public bodies to carry out sustainable development. In fulfilling this duty, they must set and publish well-being objectives. These are objectives relating to how the public body intends to contribute to the achievement of the well-being goals (see section 4). Public bodies must set well-being objectives which seek to maximise their contribution to the well-being goals. In addition, they must take all reasonable steps, in exercising their functions, to meet their objectives.
46. Part 2 introduces a social partnership duty on public bodies and a separate but similar social partnership duty on the Welsh Ministers. The social partnership duties apply when a public body is carrying out sustainable development in accordance with the 2015 Act, and will ensure that when making key strategic decisions in pursuit of improved well-being in Wales under the 2015 Act, public bodies are fully and properly informed by the experience and knowledge of their staff and (for the Welsh Ministers) by the views of social partners in Wales as represented by the SPC.
47. Public bodies will be subject to an annual reporting requirement and a requirement to submit the reports to the SPC.
48. Part 2 also amends the well-being goals pursued by public bodies when carrying out sustainable development under the 2015 Act so that “fair work” is part of the description of one of those goals.

### **Section 15 - Overview of Part and interpretation**

49. Section 15 summarises the relationship between the social partnership and fair work provisions in Part 2, with the 2015 Act; in particular, how the social partnership duties are linked to the well-being duty in section 3 and the wider requirement to carry out sustainable development in that Act.

50. This section explains what is meant by “sustainable development” and “public body”. Both terms are defined in accordance with the meaning given by the 2015 Act.
51. Section 15(3) provides that the public bodies subject to the social partnership duty in section 16 are those listed in section 6 of the 2015 Act, with the exception of Welsh Ministers who are subject to the social partnership duty in section 17.

### **Section 16 – Social partnership duty**

52. Section 16(1) establishes a statutory social partnership duty on each specified public body to, in so far as is reasonable, ‘seek consensus or compromise’ primarily with its recognised trade unions when taking certain actions. Where a public body does not have a recognised trade union, they must ‘seek consensus or compromise’ with other representatives of its staff.
53. The duty applies when a public body is setting its well-being objectives under section 3(2)(a) of the 2015 Act and when it is taking decisions of a strategic nature about the reasonable steps it needs to take to meet those objectives in accordance with section 3(2)(b) of the 2015 Act. It does not apply to the day- to-day decisions of a public body.
54. Section 16(2) sets out some further specific requirements of the social partnership duty, which a public body must comply with when ‘seeking consensus or compromise’. These are steps intended to involve trade unions or staff representatives in the decision-making processes. These requirements are intended to promote a more consistent and collaborative approach to strategic decision-making by public bodies, which properly takes account of the views, knowledge and experiences of that body’s workforce.

### **Section 17 – Social Partnership duty: Welsh Ministers**

55. Section 17(1) provides that the Welsh Ministers must consult with the SPC when they are taking decisions of a strategic nature about the reasonable steps to need to take to meet their well-being objectives in accordance with section 3(2)(b) of the 2015 Act. It does not apply to day- to-day decisions taken by the Welsh Ministers.

### **Section 18 – Social partnership reports**

56. Section 18 provides that a public body must prepare and publish an annual report and submit it to the SPC. 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.

### **Section 19 – Social partnership reports: Welsh Ministers**

57. Section 19 provides that the Welsh Ministers must prepare and publish an annual report. This must be submitted to the SPC and laid before the Senedd. The report must be agreed with the Social Partnership Council for Wales; or contain a statement explaining why it was not agreed.

### **Section 20 - Fair Work**

58. Section 20 amends the description of the “A Prosperous Wales” well-being goal in section 4 of the 2015 Act by substituting “fair work” for “decent work”. This amendment will result in a requirement that public bodies consider fair work when



setting and taking action to meet objectives designed to maximise their contribution to achieving the “A prosperous Wales” well-being goal.

59. This provision incorporates “fair work” within the 2015 Act and is therefore consistent with the recommendations of the Fair Work Commission in their report (published March 2019).

### **PART 3 – SOCIALLY RESPONSIBLE PUBLIC PROCUREMENT**

60. Chapter 1 explains what is meant by a “public contract”, a “contracting authority” and “public procurement”. It also makes provision for the Welsh Ministers to make regulations to amend the meaning of a contracting authority.
61. Contracting authorities are listed in Schedule 1.
62. The Welsh Ministers are a contracting authority for the purposes of this Part in all but two circumstances where it would be impractical for them to be considered a contracting authority. Under sections 29 and 30 and 35 and 36 a contracting authority must notify the Welsh Ministers in relation to the inclusion of social public works clauses in major constructions contracts and social public workforce clauses in outsourcing of contracts. Under those provisions, the Welsh Ministers are required to review any notifications provided by contracting authorities and subsequently publish the outcome of the review into the notification. In addition under section 41 the Welsh Ministers have a power to investigate how a contracting authority carries out public procurement

### **CHAPTER 2**

#### **Section 24 - Socially Responsible Procurement Duty**

63. This section sets out an overarching duty on contracting authorities, requiring them to seek to improve the economic, social, environmental and cultural well-being of their areas by carrying out public procurement in a socially responsible way.
64. This means that they must take action, in accordance with the sustainable development principle, aimed at achieving the well-being goals in the 2015 Act.
65. This is achieved by requiring contracting authorities to set and publish objectives (“socially responsible procurement objectives”) in relation to their public procurement designed to maximise the authorities’ contributions towards the well-being goals.
66. This section also introduces a category of public procurement in respect of “prescribed contracts”. These are larger procurements in respect of which it is more proportionate to seek socially responsible outcomes. When carrying out public procurement in respect of prescribed contracts contracting authorities must take all reasonable steps to meet their socially responsible procurement objectives.
67. Two constraints are placed upon this duty to “take all reasonable steps” to meet objectives. The first is that any provisions included in a contract in relation to these objectives must be proportionate with respect to the contract value. The second is that

the provisions must not conflict with any other relevant procurement-related legislation. This will include law put into place that includes contracting authorities in Wales as a result of the UK Procurement Reform Bill.

68. Prescribed contracts fall into three categories, as follows. The first category is major construction contracts. These are defined in section 25. The second category is outsourcing services contracts. These are defined in section 26. The third category is any other public contract described in regulations by the Welsh Ministers.

### **Section 25 - Socially responsible procurement duty: major construction contracts**

69. This section introduces particular actions that are required in respect of a “major construction contract”.
70. Major construction contracts are defined as public works contracts, or works contracts or works concession contracts with an estimated total value over £2m (inclusive of VAT). This includes both framework agreements and contracts entered into as a result of a framework agreement where the estimated value exceeds £2m.
71. The main action is a duty on contracting authorities to consider whether “social public works clauses” (as published by the Welsh Ministers) should be included in any contract they propose to award, and to take reasonable steps to ensure they can be implemented. The categories in which these clauses will fall, and the improvements they are intended to bring about, are listed in section 27.
72. If a decision is taken to include the clauses, in the subsequent management of the contract the contracting authority must take all reasonable steps to ensure that the obligations in the clauses are implemented when subcontracting. Examples of reasonable steps are set out in section 28 of the Bill, and are described below.

### **Section 26 - Socially responsible procurement duty: outsourcing services contracts**

73. Outsourcing services contracts are defined as either a contract under which a public service that or has been, or is currently, provided by a contracting authority is transferred to another organisation, or under which another organisation agrees to undertake any other function undertaken by, or previously undertaken by, a contracting authority.
74. This section sets out the particular actions that must be taken in relation to an outsourcing services contract (these are similar to the actions required in respect of major construction contracts).
75. The contracting authority must consider including “social public workforce clauses” in any relevant outsourcing services contract it proposes to award. These clauses are described in section 33.
76. If they are included, in the subsequent management of the contract the contracting authority must take all reasonable steps to ensure that the obligations in the clauses are implemented when subcontracting. Examples of reasonable steps are set out in section 34 of the Bill, and are described below.

### **Section 27 - Social public works clauses in major construction contracts**

77. This section requires the Welsh Ministers to publish model clauses for major construction contracts (“social public works clauses”) designed to bring about improvements to economic, social, environmental and cultural well-being. These clauses will relate to each of the improvements listed under the categories set out in the Table in section 27. In summary these cover: prompt payment for suppliers; providing employment opportunities to younger and disadvantaged people; ensuring compliance with legislation in relation to employment rights; providing appropriate training; providing opportunities to SMEs when subcontracting; and certain environmental matters.
78. “Including” social public works clauses in major construction contracts means including *all* of the model clauses, using wording that will have the same or substantially the same effect as the published model contract clause.

### **Section 28 - Social public works clauses in subcontracts**

79. As well as taking all reasonable steps to ensure that the social public works clauses are implemented in contracts (see section 25) this section requires contracting authorities to take all reasonable steps to ensure that the obligations are implemented where a contractor enters into a subcontract.
80. This section also gives some examples of what is meant by “reasonable steps”. In summary these are: ensuring that clauses with the same or substantially the same effect are included in subcontracts, and throughout subsequent contracts in the supply chain; ensuring that they can be enforced; requiring contractors to ask the contracting authority before appointing sub-contractors so that the authority can ensure that the clauses are included; requiring the contractor to inform the authority if it is not including the clauses in subcontracts; and requiring contractors to monitor the implementation of the clauses.

### **Section 29 - Social public works clauses: notifying the Welsh Ministers**

81. There may be valid reasons why a contracting authority does not intend to include social public works clauses in major construction contracts. This section requires a contracting authority to notify the Welsh Ministers if, in relation to a major construction contract –
- a. it does not intend to include the social public works clauses, or
  - b. despite taking reasonable steps to include them, they are not contained in a contract.
82. They must also inform the Welsh Ministers if that have failed to pass the required obligation through supply chains via sub-contracts, or have not put a process in place to manage their implementation.

83. A notification must be made as soon as possible giving the authority’s reasons.

### **Sections 30 and 31 - Social public works clauses: Welsh Ministers’ response and contracts**

84. Where the Welsh Ministers receive a notification from a contracting authority under section 30 this section sets out the steps required of the Ministers.

85. First the Welsh Ministers must consider whether they are satisfied with the reasons given in the notification. In doing so, they may consult the authority and may, by notice, require documents or other information from a contracting authority, in the event of which that documentation or information must be provided as soon as reasonably practicable.
86. If, after considering the details, the Welsh Ministers are not satisfied, they may direct the contracting authority to take all reasonable steps to put processes in place to include social public works clauses in the major construction contract or in sub-contracts, and to ensure they are implemented.
87. The Welsh Ministers may involve the public procurement subgroup of the SPC in the process of assessing the information and making a decision.
88. In the event of being satisfied with the authority's reasons set out in the notification, the Welsh Ministers must publish a summary of their reasons for being satisfied. In the event of not being satisfied and issuing directions they must publish the directions. If, however, they are not satisfied by do not issue directions, the Welsh Ministers must publish their reasons for not being satisfied and not issuing a direction.
89. For contracts let by the Welsh Ministers, a statement must be published as soon as reasonably practicable by the Welsh Ministers if they do not intend to include social public works clauses in a major construction contract, despite their taking reasonable steps to include them, they are not contained in a contract, or there is no process in place to manage their implementation, giving reasons.

### **Section 32 - Public services outsourcing and workforce code**

90. This section requires the Welsh Ministers to publish a code of practice (the "public services outsourcing and workforce code") about employment and pensions matters related to outsourcing services contracts. The "social public workforce clauses" will be included as part of this Code.
91. Any subsequent revision to this Code must also be published by the Welsh Ministers, and laid before the Senedd. Welsh Ministers must consult with relevant stakeholders in developing or subsequently revising the public service outsourcing and workforce code

### **Sections 33 and 34 - Social public workforce clauses in outsourcing services contracts and in subcontracts**

92. The public services outsourcing and workforce code published under section 32 must include model contract clauses ("social public workforce clauses"), designed to ensure that members of staff employed to deliver a service can, if they wish, be transferred to the new employer that will be contracted to deliver the service. These clauses will also ensure that their terms and conditions of employment and pensions arrangements are protected.
93. The clauses are also designed to ensure that in the event of the new employer recruiting further members of staff to deliver the same service, the new members of

staff are employed with terms and conditions that are no less favourable, and with pensions arrangements that are reasonable.

94. Section 34 requires contracting authorities to 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. This section also sets out examples of reasonable steps which may be taken. They include ensuring that clauses with the same or substantially the same effect are included in subcontracts, and throughout subsequent contracts in the supply chain; ensuring that they can be enforced; requiring contractors to ask the contracting authority before appointing sub-contractors so that the authority can ensure that the clauses are included; requiring the contractor to inform the authority if it is not including the clauses in subcontracts; and requiring contractors to monitor the implementation of the clauses.

### **Sections 35 and 36 - Social public workforce clauses: notifying the Welsh Ministers and responses**

95. This section requires the contracting authority to notify the Welsh Ministers if it has not included, or does not intend to include, social public workforce clauses in the contract or there is no process in place for ensuring that obligations in social public workforce clauses are implemented where the contract is subcontracted.
96. The contracting authority's notification and reasons for not including social public workforce clauses in the contract must be provided as soon as possible.
97. When the Welsh Ministers receive such a notification, they must consider whether they are satisfied with the reasons given. If they are not satisfied, they may direct the contracting authority to take all reasonable steps in order to address the situation.
98. The Welsh Ministers may involve the public procurement subgroup of the Social Partnership Council in the process of assessing the information and making a decision.
99. In the event of being satisfied with the authority's reasons set out in the notification, the Welsh Ministers must publish a summary of their reasons for being satisfied. In the event of not being satisfied and issuing directions they must publish the directions. If, however, they are not satisfied by do not issue directions, the Welsh Ministers must publish their reasons for not being satisfied and not issuing a direction.

### **Section 37 - Social public workforce clauses: Welsh Ministers' contracts**

100. For contracts let by the Welsh Ministers, a statement must be published as soon as reasonably practicable by the Welsh Ministers if they do not intend to include social public workforce clauses in an outsourcing services contract, despite their taking reasonable steps to include them, they are not contained in a contract, or there is no process in place to manage their implementation, giving reasons.

### **Section 38 - Procurement strategy**

101. This section requires contracting authorities to prepare and publish a "procurement strategy" setting out how the authority intends to carry out public procurement in a socially responsible way, and meet the objectives that it has set (described in section 24). Other matters to be included in procurement strategies may be set out in regulations made from time to time by the Welsh Ministers.

102. These strategies must be reviewed each year and any subsequent revisions must be published. Joint strategies may be published by two or more authorities.

## **CHAPTER 3 - REPORTING AND ACCOUNTABILITY**

### **Section 39 - Annual socially responsible procurement reports**

103. The section sets out a requirement on contracting authorities to publish an annual socially responsible procurement report as soon as possible at the end of each financial year. These reports must include a summary of the prescribed procurements that led to the award of any contract within that financial year, and a review of the steps that the authority has taken to meet its objectives. Welsh Ministers may also set out in regulations information that contracting authorities should include in their annual reports. This may include information on the extent to which their public procurement activities are meeting their socially responsible procurement objectives by, for example contributing to the local economy and taking environmental and other social considerations into account.
104. The report should include an assessment of further steps that could have been taken by an authority to meet its socially responsible procurement objectives and how these will be addressed in future. It must also include a summary of procurement that is planned for the following two years, along with any other information that may be required as a result of any regulations made by the Welsh Ministers.

### **Section 40 - Contracts register**

105. This section requires each contracting authority to maintain and publish a contracts register containing information on 'registrable contracts' which are of a description prescribed by the Welsh Ministers in regulations. The information required on each registrable contract is its name, date or aware, estimated value, the address of the contractor's principal place of business, subject matter, start date, end date and any period for which it may be extended.
106. Contracting authorities are not required to register any information which they consider would impede law enforcement or not be in the public interest, would prejudice the commercial interests of a person or competition between economic operators. The information about any contract may only be deleted from the contract after the contract has either been terminated or expired.

### **Section 41 - Procurement investigations**

107. This section provides the Welsh Ministers with powers of investigation into how a contracting authority carries out public procurement. This could be in relation to a particular procurement or procurement activities more generally.
108. Under this section contracting authorities may be required by the Welsh Ministers to provide documents or other information for the purposes of an investigation. At the end of any investigation, the Welsh Ministers may make recommendations to the contracting authority, publish a report and/or lay a copy of any report before the Senedd.

## **Section 42 - Welsh Ministers' annual report on public procurement**

109. This section requires the Welsh Ministers to publish, as soon as reasonably practicable after the end of a financial year, a report about public procurement in Wales. The report must summarise any investigations carried out under section [40], and information drawn from contracting authorities' annual reports. These reports must be published and laid before the Senedd.
110. Part 4 contains provisions on subordinate legislation procedures; provides powers for the Welsh Ministers to make transitional, consequential etc. provisions; and makes provision in respect of commencement, interpretation, coming into force etc.

## **Section 44. Regulations**

111. This section makes provision about how regulations under Part 3 of the Act are to be made. This includes provision about the procedures of the Senedd that apply in relation to the regulations, and the ancillary provision (that is, supplemental, incidental, consequential, transitional, transitory or saving provision) that may be made in these regulations.

## **Section 45. Interpretation of Part 3**

112. This section defines specific terms used in Part 3 of the Act and is self-explanatory.

## **Section 46. General interpretation**

113. This section defines specific terms used in this Act and is self-explanatory.

## **Section 47. Minor amendment of the WFGA 2015**

114. This section makes a minor amendment to section 9 of the WFGA 2015.

## **Section 48. Coming into force**

115. Subsection (1) brings section 48 of the Act into force the day after the day of Royal Assent.
116. All other provisions of the Act come into force by order made by the Welsh Ministers (subsection (1)). Subsection (2) allows orders that bring provisions into force to appoint different days for different purposes and subsection (3) enables orders to make transitory, transitional and saving provision in connection with bringing provisions into force.

## **Section 49. Short title**

117. This section provides that the short title of the Act is the Social Partnership and Public Procurement (Wales) Act 2023.

## Annex 2. Index of Standing Order requirements

Standing order	Section	pages/ paragraphs
26.6(i)	Statement the provisions of the Bill would be within the legislative competence of the Senedd	Member's declaration Page 2
26.6(ii)	Set out the policy objectives of the Bill	Chapter 3 - Purpose and intended effect of the legislation Pages 9 - 33
26.6(iii)	Set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted	Part 2 – Regulatory Impact Assessment Pages 52 - 109
26.6(iv)	Set out the consultation, if any, which was undertaken on: (a) the policy objectives of the Bill and the ways of meeting them;  (b) the detail of the Bill, and  (c) a draft Bill, either in full or in part (and if in part, which parts)	Chapter 4 – Consultation Pages 41 - 42
26.6(v)	Set out a summary of the outcome of that consultation, including how and why any draft Bill has been amended	Chapter 4 – Consultation Pages 39 - 44
26.6(vi)	If the Bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision	The requirement of Standing Order 26.6(vi) does not apply to this Bill as a consultation was undertaken on a draft Bill N/A
26.6(vii)	Summarise objectively what each of the provisions of the Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill	Annex 1 – Explanatory Notes Pages 122 - 135



Standing order	Section	pages/ paragraphs
26.6(viii)	<p>Set out the best estimates of:</p> <ul style="list-style-type: none"> <li>(a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise;</li> <li>(b) the administrative savings arising from the Bill;</li> <li>(c) net administrative costs of the Bill's provisions;</li> <li>(d) the timescales over which such costs and savings would be expected to arise; and</li> <li>(e) on whom the costs would fall</li> </ul>	Part 2 – Regulatory Impact Assessment  Pages 52 - 55
26.6(ix)	Any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially	Part 2 – Regulatory Impact Assessment  Page 54
26.6(x)	<p>Where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision:</p> <ul style="list-style-type: none"> <li>(a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised;</li> <li>(b) why it is considered appropriate to delegate the power; and</li> <li>(c) the Senedd procedure (if any) to which the subordinate legislation</li> </ul>	Chapter 5 - Power to make subordinate legislation  Pages 47-51

Standing order	Section	pages/ paragraphs
	made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure);	
26.6(xi)	Where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate	The requirement of Standing Order 26.6(xi) does not apply to this Bill
26.6(xii)	Set out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill (a “justice impact assessment”), in accordance with section 110A of the Act.	Part 2 – Regulatory Impact Assessment
26.6B	Where provisions of the Bill are derived from existing primary legislation, whether for the purposes of amendment or consolidation, the Explanatory Memorandum must be accompanied by a table of derivations that explain clearly how the Bill relates to the existing legal framework.	The requirement in Standing Order 26.6B for a Table of Derivations is not applicable to this Bill as the Bill is a standalone piece of legislation and does not derive from existing primary legislation for the purposes of amendment or consolidation.
26.6C	Where the Bill proposes to significantly amend existing primary legislation, the Explanatory Memorandum must be accompanied by a schedule setting out the wording of existing legislation amended by the Bill, and	The requirement is Standing Order 26.6C for a Schedule of Amendments is not applicable to this Bill as the Bill does not propose to significantly

Standing order	Section	pages/ paragraphs
	setting out clearly how that wording is amended by the Bill.	amend existing primary legislation.

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### Annex 3. Public bodies subject to the Bill

- The in-scope public bodies are as follows:
  - (a) the Welsh Ministers;
  - (b) a local authority;
  - (c) a local health board;
  - (d) the following NHS Trusts:
    - (i) Public Health Wales;
    - (ii) Velindre;
  - (e) a National Park authority for a National Park in Wales;
  - (f) a Welsh fire and rescue authority;
  - (g) the Natural Resources Body for Wales;
  - (h) the Higher Education Funding Council for Wales;
  - (i) the Arts Council of Wales;
  - (j) the Sports Council for Wales;
  - (k) the National Library of Wales;
  - (l) the National Museum of Wales.
  
- A longer list of bodies is covered by the public procurement duties. These are described as contracting authorities and are:
  - a) the Senedd Commission;
  - b) a person listed as a “public body” in section 6(1) of the WFGA 2015;
  - c) the Welsh Language Commissioner;
  - d) the Future Generations Commissioner for Wales;
  - e) the Children’s Commissioner for Wales;
  - f) the Commissioner for Older People in Wales;
  - g) Social Care Wales;
  - h) the Welsh Ambulance Services NHS Trust;
  - i) Digital Health and Care Wales;
  - j) the Welsh Revenue Authority;
  - k) Transport for Wales;
  - l) the Royal Commission on the Ancient and Historical Monuments of Wales;
  - m) Her Majesty’s Chief Inspector of Education and Training in Wales;
  - n) Meat Promotion Wales;
  - o) Qualifications Wales;
  - p) Health Education and Improvement Wales;
  - q) the Education Workforce Council;
  - r) the Local Democracy and Boundary Commission for Wales.

## Annex 4. Regulatory Impact Assessment Summary Costs Tables

**Table 7:** costs to the Welsh Government (£)

	Financial Year				
	2023-24	2024-25	2025-26	2026-27	2027-28
Table 2.3: Illustrative opportunity costs for members of a two hour meeting	9,600	9,600	9,600	9,600	9,600
Table 2.4: Working out the estimated opportunity costs for running a sub group	8,600	8,600	8,600	8,600	8,600
Table 2.5: Opportunity cost of SPC members spending one hour and thirty minutes per annum engaging their sector through their established representative structures	1,400	1,400	1,400	1,400	1,400
Table 2.6: Working out the estimated opportunity cost of producing advice to Ministers on a straightforward matter	4,400	4,400	4,400	4,400	4,400
Table 2.7: Working out the estimated opportunity cost of producing advice to Ministers on a complex matter	7,600	7,600	7,600	7,600	7,600
Cost for developing SPC digital presence	10,000				

Table 2.8: Working out the estimated opportunity cost for the SPC to take part in a facilitated workshop.	4,700			4,700	
Table 3.1 – Running costs for Welsh Government staff	162,800	162,800	162,800	162,800	162,800
Table 3.2 – Welsh Government costs for processing and analysing reports	22,000	22,000	22,000	22,000	22,000
Table 3.3: cost of developing a single piece of statutory guidance	21,200			21,200	
Table 4: Indicative costings of producing advice or guidance on a non-complex issue:	5,400	5,400	5,400	5,400	5,400

Table 5.1: Working out the estimated opportunity cost of producing statutory and supplementary guidance.		74,400			
Table 5.2: Costs arising from additional workload in producing the Welsh Government's Annual Report	8,100	8,100	8,100	8,100	8,100
Table 5.3 - additional costs to be incurred for enhanced staffing to support ongoing delivery	303,600	303,600	303,600	303,600	303,600
<b>Table 5.4 – estimated additional programme costs to support implementation</b>					
Development of statutory guidance		124,400			
Regional awareness sessions	10,000				
Staff travel to meet heads of procurement	5,000				
Review and reporting		25,000			
Annual webinars	4,000	4,000			
Post-implementation review			25,000		
Supplier support sessions		16,500			

Table 7.1: Costs to the Public Sector (£)

	Financial Year				
	2023-24	2024-25	2025-26	2026-27	2027-28

Table 3.4: costs to public sector for familiarisation with social partnership duty	22,319				
Table 3.5: costs to public bodies for attending social partnership meetings	82,200	82,200	82,200	82,200	82,200
Table 5.5– costs incurred by collating data required for reporting on socially responsible procurement outcomes (annual costs)	101,100	101,100	101,100	101,100	101,100
Table 5.6 - costs associated with objective setting and planning	215,900	215,900	215,900	215,900	215,900
Table 5.7 – costs incurred by public sector for staff time at awareness and training sessions	352,800				
Construction contract management costs	3,879,825	3,879,825	3,879,825	3,879,825	3,879,825



Table 7.2: Costs to the Private Sector (£)

	Financial Year				
	2023-24	2024-25	2025-26	2026-27	2027-28
Construction contract management costs	1,293,275	1,293,275	1,293,275	1,293,275	1,293,275

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## **Annex 5. Bodies included in the public procurement duties**

470. A longer list of bodies is covered by the procurement duties compared with the other duties in the Bill; the primary rationale for inclusion on the list is that a body's functions must be exercised only in relation to Wales and are mainly on matters that are not reserved to the UK Government.
471. A further aim is that in due course the list of bodies to be made subject to these procurement duties should mirror as far as is possible those which, in due course, are expected to be defined as Welsh Contracting Authorities by the UK Government, in conjunction with the Welsh Government, in their procurement reform legislation
472. As a result of this, and response to feedback received during consultation, the list of bodies in the draft Bill has been extended to include most of the bodies classed as Devolved Welsh Authorities in section 157A of the Government of Wales Act 2006, with the exception of some of the smallest bodies that carry out very little procurement. This Bill also provides flexibility for new bodies to be listed in the future, which could be the subject of consultation at that time.
473. This does not, however, mean that all bodies would have to carry out all activities to the same level of detail. Those that do not carry out many procurements above the thresholds will have lower expectations placed upon them.
474. It is also important to note that a different list of organisations is currently covered by Guidance and Direction on the Workforce Two-tier Code, and that this was reflected in the draft Bill. However, the consultation process revealed an expectation that the social public workforce clauses and refreshed Two-tier Code will apply to the same list of bodies as the main duties.

## Endnotes

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- <sup>1</sup> [Fair Work Wales - Report of the Fair Work Commission \(gov.wales\)](#)
- <sup>2</sup> [Social Value Act: information and resources - GOV.UK \(www.gov.uk\)](#)
- <sup>3</sup> <https://www.legislation.gov.uk/ukpga/2006/32/section/60>
- <sup>4</sup> <https://gov.wales/sites/default/files/publications/2019-05/fair-work-wales.pdf>
- <sup>5</sup> [FGC-Report-English.pdf \(futuregenerations.wales\)](#)
- <sup>6</sup> Podvršič, A., Becker J., Piroška, D., Profant, T. and Hodulák, V (2020) *Mitigating the COVID-19 effect: Emergency economic policy-making in Central Europe*. Available at: [https://www.etui.org/sites/default/files/2020-08/Mitigating%20the%20COVID-19%20effect\\_2020\\_web.pdf](https://www.etui.org/sites/default/files/2020-08/Mitigating%20the%20COVID-19%20effect_2020_web.pdf)
- <sup>7</sup> [Fair Work Wales - Report of the Fair Work Commission \(gov.wales\)](#)
- <sup>8</sup> [http://www.audit.wales/system/files/publications/Public-Procurement-in-Wales-2017-English\\_0.pdf](http://www.audit.wales/system/files/publications/Public-Procurement-in-Wales-2017-English_0.pdf)
- <sup>9</sup> <http://senedd.assembly.wales/mglIssueHistoryHome.aspx?lId=20119>
- <sup>10</sup> [ENG-Section-20-Procurement-Review.pdf \(futuregenerations.wales\)](#)
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- <sup>12</sup> [Draft Social Partnership and Public Procurement \(Wales\) Bill | GOV.WALES](#)
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- <sup>16</sup> [Fair Work Wales - Report of the Fair Work Commission \(gov.wales\)](#)
- <sup>17</sup> <https://gov.wales/sites/default/files/publications/2019-10/a-healthier-wales-action-plan.pdf>  
[Written Statement: The Way Forward for Procurement Reform in Wales \(18 August 2021\) | GOV.WALES](#)
- <sup>18</sup> [Ethical employment in supply chains: code of practice | GOV.WALES](#)
- <sup>19</sup> A study by the Work Foundation showed that employees in partnership organisations stayed with employers longer, had lower levels of absenteeism and higher satisfaction
- <sup>20</sup> <https://www.ipa-involve.com/pages/category/research-publications>
- <sup>21</sup> Susha, I., Gronlund, A. and Van Tulder, R. (2019) 'Data driven social partnerships: Exploring an emergent trend in search of research challenges and questions', *Government Information Quarterly*, 36 (1): 112-128
- <sup>22</sup> Greer, S.L. and Falkenbach, M. (2017) 'Social partnership, civil society and health care' in Greer S.L., Wismar, M., Pastorino, G., et al., (eds) *Civil Society and Health: Contributions and potential*, Copenhagen: Available at <https://www.ncbi.nlm.nih.gov/books/NBK459038/>

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- <sup>23</sup> Marshall, H. (2008) *Trade Unionism and Social Partnership: Why does Wales provide a way forward?* Bevan Foundation
- <sup>24</sup> Podvršič, A., Becker J., Piroska, D., Profant, T. and Hodulák, V (2020) *Mitigating the COVID-19 effect: Emergency economic policy-making in Central Europe*. Available at: [https://www.etui.org/sites/default/files/2020-08/Mitigating%20the%20COVID-19%20effect\\_2020\\_web.pdf](https://www.etui.org/sites/default/files/2020-08/Mitigating%20the%20COVID-19%20effect_2020_web.pdf)
- <sup>25</sup> <https://www.futuregenerations.wales/wp-content/uploads/2020/05/FGC-Report-English.pdf>
- <sup>26</sup> [Fair Work Wales - Report of the Fair Work Commission \(gov.wales\)](#)
- <sup>27</sup> [Fair Work Wales - Report of the Fair Work Commission \(gov.wales\)](#)
- <sup>28</sup> For example:  
[https://d1ssu070pg2v9i.cloudfront.net/pex/carnegie\\_uk\\_trust/2021/06/24152422/Research-findings-summary-does-good-work-have-a-positive-effect-on-productivity-Jan-2020.pdf](https://d1ssu070pg2v9i.cloudfront.net/pex/carnegie_uk_trust/2021/06/24152422/Research-findings-summary-does-good-work-have-a-positive-effect-on-productivity-Jan-2020.pdf) and [Can-good-work-solve-the-productivity-puzzle-FINAL.pdf](#)
- <sup>29</sup> For example:  
[https://d1ssu070pg2v9i.cloudfront.net/pex/carnegie\\_uk\\_trust/2020/10/27154455/Good-Work-for-Well-being-in-the-Coronavirus-Economy-Full-report.pdf](https://d1ssu070pg2v9i.cloudfront.net/pex/carnegie_uk_trust/2020/10/27154455/Good-Work-for-Well-being-in-the-Coronavirus-Economy-Full-report.pdf)
- <sup>30</sup> <https://gov.wales/sites/default/files/publications/2019-05/fair-work-wales.pdf>
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- <sup>32</sup> [Fair-Work-Convention-Framework-PDF-Full-Version.pdf \(fairworkconvention.scot\)](#)
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- <sup>43</sup> Microsoft Word - SVA review report formatted 150202.docx (publishing.service.gov.uk)
- <sup>44</sup> <https://gov.wales/more-equal-wales-strengthening-social-partnership-white-paper>.
- <sup>45</sup> Costs for Welsh Government staff are based on average gross costs for civil staff pay bands 2022-23. This includes additional employment costs (pensions, national insurance contributions, etc.).
- <sup>46</sup> Using the 2022 ONS-ASHE figures for the mean average hourly gross pay for Wales Chief Executives and Senior Officials as a proxy
- <sup>47</sup> As above
- <sup>48</sup> Using the 2022 ONS-ASHE figures for the mean average hourly gross pay for Wales Chief Executives and Senior Officials as a proxy.
- <sup>49</sup> As above.
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- <sup>51</sup> Senedd Cymru Remuneration Board, Determination on Members' Pay and Allowances for the Sixth Senedd (Number Two)
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- <sup>55</sup> Workforce Partnership Council, Workforce Partnership Council (WPC) Agreement: Partnership and Managing Change
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- <sup>58</sup> Using the 2022 ONS-ASHE figures for the mean average hourly gross pay for Wales Chief Executives and Senior Officials as a proxy
- <sup>59</sup> As above
- <sup>60</sup> As above

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<sup>61</sup> As above

<sup>62</sup> As above

<sup>63</sup> Using the 2022 ONS-ASHE figures for the mean average hourly gross pay for Wales Chief Executives and Senior Officials as a proxy

<sup>64</sup> As above

<sup>65</sup> Senedd Cymru Remuneration Board, Determination on Members' Pay and Allowances for the Sixth Senedd (Number Two)

<sup>66</sup> As above

<sup>67</sup> As above

<sup>68</sup> Using the 2022 ONS-ASHE figures for the mean average hourly gross pay for Wales Chief Executives and Senior Officials as a proxy

<sup>69</sup> Using the 2022 ONS-ASHE figures for the mean average hourly gross pay for Wales Chief Executives and Senior Officials as a proxy

<sup>70</sup> As above

<sup>71</sup> Costs for Welsh Government staff are based on average gross costs for civil staff pay bands 2022-23. This includes additional employment costs (pensions, national insurance contributions, etc.).

<sup>72</sup> As above.

<sup>73</sup> The Regional Partnership Board (RPB) Self-Assessment Tool and Guidance was been developed in 2019 by an Advisory Group consisting of representatives of Welsh Government, Care Inspectorate Wales, Healthcare Inspectorate Wales, Wales Audit Office, Welsh Local Government Association, Welsh NHS Confederation, Wales Council for Voluntary Action, Association of Directors of Social Services Cymru and NHS Directors of Planning.

<sup>74</sup> Using the 2022 ONS-ASHE figures for the mean average hourly gross pay for Wales Chief Executives and Senior Officials as a proxy

<sup>75</sup> As above

<sup>76</sup> As above

<sup>77</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0729&from=SL>

<sup>78</sup> Costs for Welsh Government staff are based on average gross costs for civil staff pay bands 2022-23. This includes additional employment costs (pensions, national insurance contributions, etc.).

<sup>79</sup> Costs for Welsh Government staff are based on average gross costs for civil staff pay bands 2022-23. This includes additional employment costs (pensions, national insurance contributions, etc.).

<sup>80</sup> Costs for Welsh Government staff are based on average gross costs for civil staff pay bands 2022-23. This includes additional employment costs (pensions, national insurance contributions, etc.).

<sup>81</sup> Using the 2022 ONS-ASHE figures for the mean average hourly gross pay for Wales Human resources and industrial relations officer as a proxy

<sup>82</sup> As above

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<sup>83</sup> Costs for Welsh Government staff are based on average gross costs for civil staff pay bands 2022-23. This includes additional employment costs (pensions, national insurance contributions, etc.).

<sup>84</sup> Carnegie UK Trust and RSA Future Work Centre: Can Good Work Solve the Productivity Puzzle? Available at: [https://d1ssu070pg2v9i.cloudfront.net/pex/pex\\_carnegie2021/2020/01/05125116/Can-good-work-solve-the-productivity-puzzle-FINAL.pdf](https://d1ssu070pg2v9i.cloudfront.net/pex/pex_carnegie2021/2020/01/05125116/Can-good-work-solve-the-productivity-puzzle-FINAL.pdf)

<sup>85</sup> Costs for Welsh Government staff are based on average gross costs for civil staff pay bands 2022-23. This includes additional employment costs (pensions, national insurance contributions, etc.).

<sup>86</sup> Costs for Welsh Government staff are based on average gross costs for civil staff pay bands 2022-23. This includes additional employment costs (pensions, national insurance contributions, etc.).

<sup>87</sup> Costs for Welsh Government staff are based on average gross costs for civil staff pay bands 2022-23. This includes additional employment costs (pensions, national insurance contributions, etc.).

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<sup>89</sup> Costs for Welsh Government staff are based on average gross costs for civil staff pay bands 2022-23. This includes additional employment costs (pensions, national insurance contributions, etc.).

<sup>90</sup> As above

<sup>91</sup> Costs for Welsh Government staff are based on average gross costs for civil staff pay bands 2022-23. This includes additional employment costs (pensions, national insurance contributions, etc.).

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<sup>93</sup> Nature recovery action plan | GOV.WALES