

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

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

SPPP 03

Ymateb gan: Colegau Cymru | Response from: Colleges Wales



Senedd Equality and Social Justice Committee consultation:

Social Partnership and Public Procurement (Wales) Bill

15 July 2022

About ColegauCymru

ColegauCymru is a post-compulsory education charity; we promote the public benefit of post-compulsory education and learning. We also convene the further education (FE) Principals' Forum which represents Further Education colleges and FE institutions (FEIs) in Wales. ColegauCymru also undertakes research, policy development and provides practical support to FE colleges in Wales, including on work-based learning (WBL) which is a key part of FE college activity.

ColegauCymru welcomes the opportunity to respond to the Senedd's Equality and Social Justice Committee consultation on the Social Partnership and Public Procurement (Wales) Bill.

1. The establishment of a Social Partnership Council

1.1 ColegauCymru broadly welcomes the establishment of a Social Partnership Council but has some concerns regarding the plans for determining representatives. Under the current draft, the Council risks not achieving its aims of genuinely delivering on social partnership.

1.2 Much of this is a result of the somewhat confused approach to 'worker representatives', 'employee representatives' and trade unions. At present, research shows that worker or employee voice cannot be said to equate exactly to trade union voice. The majority of workers in Wales are not currently members of a trade union and so there is a need to consider how to ensure that the voices of those workers who are not union members at present are represented fairly in the proposed legislation.

1.3 Recent statistics show that in Wales in 2020, the proportion of employees who were trade union members was 31.9%, higher than the UK figure of 23.7%.¹ The make up of trade union membership is not currently representative of society and the workforce more broadly, favouring older workers, those who have been with the same employer for a significant amount of time, and those on middle rather than low incomes. Only 12.6% of those earning less than £250 per week were members of trade unions.²

¹ National Statistics/BEIS, Trade Union Membership, UK 1995-2020: Statistical Bulletin (May 2021), page 1. Available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/989116/Trade-union-membership-2020-statistical-bulletin.pdf#:~:text=UK%20trade%20union%20membership%20levels%20among%20employees%20have,in%202020%29%20to%20reach%206.56%20million%20in%202020.

See full publication for more in depth details of trade union membership and characteristics.

² National Statistics/BEIS, Trade Union Membership, UK 1995-2020, page 17; page 1; page 11.

1.4 The proportion of employees who belonged to a trade union in larger workplaces was 30.5% in 2020, compared to 15.4% of employees who are employed in a smaller workplace (less than 50 employees).³

1.5 Set against this backdrop, the draft legislation's repeated intention to involve employee representatives only if there are no unions present in a workplace would appear to risk missing or at least marginalising the voice of workplaces and employees more broadly. This cannot be effective social partnership. For this reason, mechanisms to reach, understand and engage with the views of employees more broadly, rather than solely those employees who are members of trade unions, must be explored.

1.6 There are existing examples within the Further Education sector of where this approach has worked well. ColegauCymru is currently supporting the sector in a project around workload. Working in local social partnerships with trade unions, individual colleges have examined and discussed issues of workload. In some cases, such as Grwp Llandrillo Menai, these local social partnerships have had union and non-union representation. This worked very effectively.

1.7 ColegauCymru and the further education sector is supportive of trade unions and much positive work has been undertaken in individual colleges via the local social partnerships, and prior to this too. However, during a cost of living crisis, when household finances are ever-tightening, it is understandable that workers who are not currently members of trade unions might not be able to afford to join at present, even where unions have made every effort to ensure that membership is set at affordable rates.

1.8 ColegauCymru would not wish to see a two tier system of worker voice whereby those workers who are unable (or unwilling for some other reason) to afford to join a union are less likely to have their voices heard at the Social Partnership Council and subsequently, their issues addressed or raised.

1.9 Likewise, it is not inconceivable that situations could arise in which the majority of a workforce are not in agreement with the position of the recognised trade union but that such a circumstance would not then be reflected to the Social Partnership Council. It is only right that trade unions, while seeking the good of the wider workforce, prioritise the views and concerns of their subscription paying members. However, this risks potential conflict with the views of a workforce more widely and we would be keen to see consideration given to all voices.

1.10 ColegauCymru also has concerns about the worker representative appointment process whereby the First Minister may only appoint worker representatives who have been nominated by Wales TUC Cymru. Rather than this ensuring "that worker representatives are genuinely representative of the collective experience of the workforce", surely this risks representing or at

³ National Statistics/BEIS, Trade Union Membership, UK 1995-2020, page 10.

least privileging the views of union members who, at present, form only a minority of employees in Wales.

1.11 Given that only 15.4% of employees who are employed in a smaller workplace (less than 50 employees) are members of a trade union, we are not convinced that the Wales TUC is currently the best route to find representatives to speak for employees from the significant section of the workforce who are employed in micro or small workplaces. Something similar to a public appointments process, other nominations process or expressions of interest for being a worker representative should be established. This could involve the Wales TUC but it does not seem equitable that a single organisation should be the only nominating organisation and thus the only route to becoming a worker representative, especially given the current proportion and make up of union members across Wales/UK.

1.12 It is not clear how the views of, for example, young workers, apprentices, those workers on short-term contracts or who work in small or microbusinesses can be adequately represented on the Social Partnership Council under the arrangements currently proposed.

1.13 We would like to see the Bill amended to include an obligation on the Social Partnership Council to seek input/information from sections or segments of the work force that are not currently represented by trade unions.

1.14 ColegauCymru is also keen to understand how Welsh language issues will be taken into account via the Social Partnership Council and in the appointment of both employer and worker representatives.

2. 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

ColegauCymru is supportive of this duty on the proposed list of public bodies subject to resolution of the concerns raised above in which non-trade unions staff representatives should not be automatically excluded from contributing.

3. A statutory duty on Welsh Ministers to consult social partners, employers and worker representatives through the Social Partnership Council when delivering on their well-being objectives under section 3(2)(b) of the WFG Act 2015

This has potential to strengthen and increase the impact of such well-being objectives and ColegauCymru is content with this proposal.

4. Amendment of section 4 of the WFG Act 2015 by substituting 'fair work' for 'decent work' within the existing "A prosperous Wales" goal

ColegauCymru supports this change which will improve consistency of approach, definitions and hopefully understandings.

5. 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

ColegauCymru notes that this duty will not apply to the Further Education sector and is supportive, subject to minimisation of additional bureaucracy and ensuring a proportional approach.

6. Certain public bodies to carry out contract management duties to ensure that socially responsible outcomes are pursued through supply chains.

As above.

7. Reporting duties to be imposed on the public bodies and Welsh Ministers in relation to the Social Partnership Duty and Procurement duty.

All reporting duties should take the most efficient and least onerous approach with feedback and reviews of how the reporting duties have worked every year for at least the first three years to ensure that systems are fit for purpose and achieve the desired outcomes and impact.

8. Any potential barriers to the implementation of the Bill's provisions and whether the Bill takes account of them

ColegauCymru highlights the challenge of relying on (or privileging) the views of trade unions, as opposed to the majority of workers more widely who are not part of a trade union, and viewing this as sufficient 'worker voice'. This seems at odds with the Bill and its intent.

9. The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)

While ColegauCymru does not have a legal specialism in this area, these seem appropriate.

10. Whether there are any unintended consequences arising from the Bill?

10.1 The Bill as drafted risks excluding a significant amount of workers from its scope by relying on (or privileging) the views of trade unions, as opposed to the majority of workers more widely who are not part of a trade union, and claiming this as sufficient 'worker voice'. There is a risk that this creates a two-tier system of worker voice whereby those workers who are unable (or unwilling for some other reason) to afford to join a union are less likely to have their voices heard at the Social Partnership Council and subsequently, their issues addressed or raised. ColegauCymru would not wish to see this.

10.2 Similarly, as set out earlier, given the current profile of trade union members, there is a risk that the views of, for example, young workers, apprentices, those workers on short-term contracts or who work in small or microbusinesses may not be adequately represented on the Social Partnership Council under the arrangements currently proposed.

10.3 The current process for nomination and acceptance of worker members to the Social Partnership Council needs to be wider than solely Wales TUC Cymru.

10.4 There is also a need to ensure that we do not introduce layers of bureaucracy which might stifle the rate of progress on this issue.

11. The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum).

It is not clear whether the financial implications of the Bill take proper account of the current impact of inflation and it may be necessary to revisit these costs regularly to ensure that they are manageable and proportionate to the objectives set out.

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