

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 14

Ymateb gan: Chwarae Teg | Response from: Chwarae Teg



Chwarae Teg response to Equality and Social Justice consultation:

Bill Scrutiny: Social Partnership and Public Procurement (Wales) Bill

July 2022

Introduction

We are pleased to provide evidence to support the scrutiny of the Social Partnership and Public Procurement (Wales) Bill. We have responded to multiple Welsh Government consultations as this Bill has been developed. Tripartism can be a powerful tool for integrating a gender perspective into discussions about economic and social policy.¹ Steps to formalise these arrangements in Wales, could therefore provide further impetus to ensuring a feminist Welsh Government and mainstreaming equality across all policy and delivery.

However, as we have highlighted in our previous consultation responses to Welsh Government, the potential positive impact of these proposals will only be realised if every opportunity is seized to mainstream equality into the provisions of the Bill and the implementation of new duties.

A number of changes have been made to this Bill since the draft Bill consultation by Welsh Government in 2021. Unfortunately these changes have done little to mainstream equality resulting in numerous missed opportunities to contribute to a more equal Wales.

It's imperative that flagship pieces of legislation such as this, that aim to enhance the wellbeing of people in Wales and put in place additional duties for public bodies, align with existing equalities legislation and regulations and that all opportunities to ensure equitable outcomes are seized. It is not enough for this to be left to secondary legislation, regulation or policy statements. Therefore we believe there is much to be done to embed equality within this draft Bill, and we set out below how this could be done within a number of the Bill's key provisions.

Key messages

1. We welcome the proposed changes in principle and support continued social partnership working in Wales. We would caution that legislation and new regulatory measures like the duties proposed are not a 'silver bullet' and will need to be supported

¹ ILO (2019) *Thematic Brief: The Contribution of Social Dialogue to Gender Equality*

by investment, leadership, guidance and appropriate resources to have a meaningful impact.

2. Despite aiming to enhance the wellbeing of the people of Wales and referencing the positive impact on equality throughout, this Bill wholly ignores the existing Welsh Specific Equality Duties (WSED), a key element of the existing legislative and regulatory framework for equality in Wales. The WSED and Public Sector Equality Duty (PSED) include requirements related to socially responsible procurement and measures that directly link to Fair Work, and apply to the same public bodies as the proposed new duties. We believe this oversight needs to be corrected as the Bill progresses.
3. There is little evidence in this Bill of equality mainstreaming, despite Welsh Ministers' commitment to mainstreaming as articulated in the acceptance of the recommendations in the Gender Equality Review and the subsequent Advancing Gender Equality Action Plan. Actions to mainstream equality into this Bill should include:
 - 3.1. Adding inclusion as a social partnership principle
 - 3.2. Including equality alongside fair work and wellbeing as a central consideration in procurement
 - 3.3. Mainstreaming equality into all outputs required by the socially responsible procurement duties, including strategies, objectives and reports from public bodies
 - 3.4. Including social care as well as construction in the new contract management duties
 - 3.5. Requiring diversity among Social Partnership Council (SPC) Representatives and including this requirement in the SPC terms of reference, which must be available in at least draft form before initial appointments are made
 - 3.6. Place a requirement on SPC representatives to demonstrate how they are committed to taking action on gender equality, either through signing up to a framework of actions for gender equality or providing evidence of action already being taken
4. Since the previous draft Bill, the measures related to Fair Work have significantly changed to focus solely on amending the Wellbeing of Future Generations (Wales) Act (WFG Act) objective of a "more prosperous Wales" to reflect 'fair work'. We question the extent to which this will drive any meaningful change. Previous plans for Fair Work objectives set by Welsh Ministers did provide an opportunity for a coordinated and strategic approach to fair work, supported with scrutiny from the Senedd, something the new measures simply won't replicate.

Detailed Response

1. **General Aims and Principles of the Bill**
 - 1.1. We support continued social partnership working in Wales and welcome some of the changes made from previous drafts of this Bill to better align the legislation with some existing legislation and regulation in Wales. However, we believe a significant gap is the failure to align the legislation, or even make reference to, the Public Sector Equality Duty and Welsh Specific Equality Duties.

- 1.1.1. For example, at point 5 it's noted that "the Bill is intended to complement other legislation such as the Wellbeing of Future Generations (Wales) Act and the Socio-economic duty in section 1 of the Equality Act 2010" and at point 60 in the explanatory memorandum, it's stated that "The Bill will also complement other statutory duties in Wales, such as the socio-economy duty". There is no reference to the PSED or WSED.
- 1.2. The explanatory memorandum states that the "Welsh Government is working in social partnership to build an economy that promotes fair work, equality and economic, social and environmental justice." However, without linking the provisions of this Bill with the existing legislative foundation for equality we believe this will be difficult to achieve.
- 1.3. The draft Bill places a number of additional duties on public bodies, on top of an already crowded and complex field of duties and requirements. The Gender Equality Review highlighted this complexity as a key challenge in successful implementation of equality and wellbeing duties, and set out a number of recommendations that would better align the requirements of the Public Sector Equality Duty (PSED) and associated Welsh duties, with those of the Wellbeing of Future Generations (Wales) Act (WFG Act), given the shared purpose and ambition across these measures.²
 - 1.3.1. The Gender Equality Review identified implementation gaps across the legislative and regulatory framework for equality and well-being, namely the Welsh Specific Equality Duties and WFG Act, and suggested that in places equalities was not getting enough focus as the WFG Act was implemented and there was a risk that the new requirements would supplant existing duties, such as the WSED.³
 - 1.1.1. The report of the second phase of the Gender Equality Review set out a number of recommendations to improve the alignment of existing duties and address the implementation gap. These are outlined in detail in a supporting report from Dr. Alison Parken, but in summary involve aligning processes and guidance, setting challenging objectives based on achieving equality of outcome and moving to a new way of working that mainstreams equality and provides the space to think, analyse, vision and act.⁴
 - 1.1.2. These are lessons that should inform the development of the Social Partnership Bill, any associated guidance and implementation across public bodies, alongside work to more effectively mainstream equality into the provisions of the Bill itself.
- 1.4. We also note that there does not appear to be an equality impact assessment (EqIA) published alongside this draft Bill. While there was an EqIA published with the draft Bill in 2021, there have been significant changes to the Bill since that point. We also flagged challenges with the published EqIA, namely that there was a lack of

² Chwarae Teg (2019) *Deeds not Words: Review of Gender Equality in Wales (Phase Two)*

³ Chwarae Teg (2018) *Rapid Review of Gender Equality 2018: Phase One*

⁴ Chwarae Teg (2019) *Deeds not Words: Review of Gender Equality in Wales (Phase Two)* / Dr. Alison Parken (2019) *Improving Well-being and Equality Outcomes: Aligning processes, supporting implementation and creating new opportunities*

information provided which made it very difficult to answer consultation questions about the potential impact of the legislation.

- 1.4.1. Given the significant changes this legislation will bring about, including the creation of new governance structures to directly advise Ministers, we believe an EqlA should be published asap to aid scrutiny of the Bill and demonstrate how equality impacts have been considered as it was drafted.
- 1.5. The social partnership principles do not appear in the Bill itself but are referenced in the explanatory memorandum. These principles and the associated shared commitments make no reference to equality or inclusion, not even in relation to 'voice and participation'. This is one of many examples where equality has been overlooked in the Bill. We reiterate what we have said previously – that equality and inclusion should be included as principles for social partnership.

2. Social Partnership Council

- 2.1. The proposed Social Partnership Council (SPC) will have a significant role to play in the implementation of this Bill, and in advising Ministers on strategic decisions. As such, we think it is imperative that this Council is gender balanced and has diversity of representation.
- 2.2. We know that women, disabled people and ethnic minorities remain under-represented in public life, including in public appointments. We also know that better decisions are made when diverse voices are in the room, by ensuring that different perspectives and experiences are considered.
- 2.3. There is no mention in the Bill itself or the explanatory memorandum as to whether there will be expectations around gender balance and diversity for the SPC or how such expectations will be enforced. We believe this is a significant oversight, particularly as it was highlighted in the Welsh Government's response to the last consultation on this (2021) that diversity of representation was raised by a number of respondents.
- 2.4. We believe this draft Bill should be amended to include a requirement for gender balance and diversity of representation on the SPC, supported with information on how Ministers would ensure this was achieved.
- 2.5. We previously recommended that the requirement for gender balance and diverse representation be detailed in the Terms of Reference for the SPC, which should be in place, at least in draft form, before any appointments are made.

3. Social Partnership Duty

- 3.1. As outlined above, there are already a number of duties in place for public bodies, that while not synonymous with one another do overlap and complement one another in terms of general aims, process and practice.
- 3.2. The addition of the Social Partnership Duty in itself is not necessarily problematic but we do believe that work will be required to ensure alignment of processes where possible, to avoid the issues highlighted in the Gender Equality Review.

- 3.3. While alignment of processes alone will not entirely solve potential implementation gaps, it can help to avoid duplication and ease pressure on resources so more time can be focused on taking action rather than process.
- 3.4. Aligning reporting requirements with WFG Act duties and the WSED could also help to bring in the equalities analysis that we believe is critical to the successful implementation of WFG Act and social partnership duties, in pursuit of social justice.

4. Fair Work

- 4.1. It's in relation to fair work that we see the greatest change from the previous draft Bill. While we support the decision to bring consistency in language and definition around fair work, and the desire to ensure pursuit of the WFG goal of a more prosperous Wales has a focus on fair work, we question whether the provisions included in the draft Bill as it stands are strong enough to make any meaningful difference on the ground.
- 4.2. Equality is also central to Fair Work. The report from the Fair Work Commission stated that "it is important that the tackling of inequality and active promotion of equality and inclusion is seen as integral to the fair work agenda".⁵ We would like to better understand how it is envisaged that the provisions around Fair Work in the draft Bill will ensure equality is mainstreamed into wellbeing objectives related to fair work and how those involved in implementation of the Social Partnership Duty will be supported to gain the necessary expertise and knowledge to mainstream equality into their work.

5. Socially Responsible Procurement

- 5.1. We strongly support a commitment to socially responsible procurement, recognising that procurement is a powerful lever to drive change within Wales. We fully support the intention to simplify and reduce duplication between the large number of expectations placed on procurement departments, which is why it's important that work is done at the outset to align the new procurement duties with equality duties, and to recognise that looking at fair work, wellbeing and equality together is the most effective way to ensure that socially responsible procurement delivers equitable outcomes for all.
- 5.2. We believe that there is an opportunity here to include equality alongside wellbeing and fair work as central considerations in procurement. As it stands it is not clear from the proposals how the new duty will contribute to Welsh Government equality goals or align with the procurement requirements of the Public Sector Equality Duty (PSED) and Welsh Specific Equality Duties (WSED).
- 5.3. Equality should be mainstreamed into all the outputs required under the duty, for example strategies, objectives and annual reporting. Strategies and objectives set by commissioning authorities must be required to deliver against the requirements

⁵ Fair Work Commission (2019) *Fair Work Wales: Report of the Fair Work Commission*

of the PSED and socio-economic duty, and clearly consider how procurement will be used to help tackle inequality and poverty.

- 5.4. We are pleased to see outsourcing contracts included within the “prescribed procurements” alongside major construction contracts, as this should see additional requirements applied to the outsourcing of social care, something we called for in previous consultation responses. We think it’s important that the new requirements are applied to any renewed contracts for outsourced services that have historically been delivered by the public sector, given the significant amount of social care that has already moved to outsourced delivery.
 - 5.4.1. The proposed “public services outsourcing and workforce code” offers an opportunity to put in place requirements around standard terms and conditions of employment to better protect social care workers, and ensure that companies offering fair work are not at risk of being undercut by larger, private sector companies.
 - 5.4.2. In our *Manifesto for a Gender Equal Wales* we call for an ethical commissioning charter for social care to ensure a consistent approach to commissioning throughout Wales that looks beyond cost as the most important criteria and drives low quality and unethical providers out of the market.⁶
- 5.5. Welsh Ministers will be required to publish social public work clauses for major construction contracts. Of those listed in the Bill, we believe that against employment women should be explicitly listed as it’s well documented that women continue to be significantly under-represented in the construction sector (12.5% of the workforce⁷) with little progress made to date in redressing that imbalance. Merely referring to “people who are otherwise disadvantaged” is not sufficient.
- 5.6. There is another opportunity under these duties to align activity with existing duties. The proposals reference the intention to align the annual reporting on socially responsible procurement with WFG Act reporting. This should be extended to also align with reporting requirements under the WSED. The Gender Equality

Conclusion

Review recommended aligning processes required under existing duties, notably the WSED and WFG Act to support more effective implementation.⁸ These lessons must inform the development and roll-out of new duties.

We welcome the proposed changes outlined in this Bill in principle, and believe that they have the potential to make a positive contribution to tackling inequality and realising ambitions to being a feminist government and a world leader for gender equality.

This potential can only be realised however, if every opportunity is seized to mainstream equality into the provisions of the Bill. As drafted these opportunities have not been seized,

⁶ Chwarae Teg (2020) *Manifesto for a Gender Equal Wales*

⁷ Chwarae Teg (2022) *State of the Nation*

⁸ Chwarae Teg (2019) *Deeds not Words: Review of Gender Equality in Wales (Phase Two)*

so we have made a number of recommendations around each of the key provisions to address this.

Alignment with existing duties is an important consideration, and while thought has clearly been given to how the new duties might align with requirements under the WFG Act, it seems little thought has been given to alignment with other key elements of the legislative and regulatory framework for equality and wellbeing, namely the Welsh Specific Equality Duties. This needs to be considered if the new duties are to complement the existing duties rather than supplanting them, which is what has happened in the past.

Returning to the lessons and the recommendations of the Gender Equality Review would be a useful step to ensure that this Bill plays an active role in advancing equality. These recommendations, which have been accepted in full, include a commitment to equality mainstreaming and it's imperative that flagship legislation such as this reflects that commitment.

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