

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 21

Ymateb gan: National Education Union Cymru | Response from: National Education Union Cymru



Social Partnership and Public Procurement (Wales) Bill

General Principles

National Education Union Cymru response

NEU Cymru broadly welcomes the Social Partnership and Public Procurement Bill. Overall, we view the Bill as a positive means by which Wales can place social partnership arrangements on a statutory footing – and we therefore accept the general principles.

Trade unions¹ are the collective representatives of the workforce, and allow workers to raise critical issues collectively – offering them protection from poor employment practices through individual support, representation and organising on collective issues. Social partnership in Wales is an important part of ensuring workers rights are recognised by Welsh Government, the Welsh public sector and employers more widely.

Throughout the pandemic, the Shadow Social Partnership Council has allowed issues to be raised and decisions to be challenged. The proposals set out within the Bill are more specifically about tri-partite social partnership arrangements, and set out what Wales can do, within scope of the devolution settlement. We believe the Bill should help Welsh Government in fulfilling their aims, not least a more prosperous Wales for everyone.

We would however welcome the Welsh Government going further on certain aspects of social partnership alongside this Bill. We note that there is a Procurement Bill going through Westminster which will give Welsh Ministers powers around procurement. It is vitally important that the Welsh Government takes this opportunity to do everything within its power across the two Bills to ensure that fair work, as set out by the Fair Work Commission Report, is central to procurement. NEU Cymru hopes to work with the Welsh Government, in the spirit of social partnership, to make sure that any statutory guidance created under both Bills can deliver of members' expectations, and go as far as possible in delivering fair work to Wales.

¹ The NEU is not affiliated to any political party. The position of both the NEU - since it was formed in 2017 - and the NEU's predecessor unions the NUT and ATL, has been that being independent of political parties allows us to speak up uncompromisingly for members and the interests of children and young people. Like all unions NEU is regulated by the Certification Officer.

For NEU Cymru's members, we believe there are critical issues which need consideration, and are a lens through which success will be measured – where Welsh Government can make significant changes. These include:

Introducing collective bargaining to decide school teachers pay and conditions

The explanatory memorandum sets out Welsh Government's commitment to collective bargaining as underpinning social partnership:

“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.”

And yet school teachers' pay and conditions, whilst devolved to Wales, is decided through a pay award body. Collective bargaining is a key part of fair work, as outlined by the Fair Work Commission Wales report.²

The 'Fair Work Wales' report, adopted by the current Welsh Government, supports collective bargaining as it recognises that collective bargaining not only allows for greater representation of the workforce, and better terms and conditions, but also “contributes to productivity and economic growth, while trade union weakness or absence contributes to inequality.”

Collective bargaining is supported as a right by both the International Labour Organization (ILO)³ and Organisation for Economic Co-operation and Development (OECD)⁴, as well as Wales TUC⁵. A good example of collective bargaining in action is the Scottish approach, including to supply teachers⁶.

The very aims of social partnership should support collective bargaining. It is a surprise to our members that collective bargaining is not already being used in Wales to determine school teachers' pay and conditions. We believe this will save the Welsh Government money as they will not

² <https://gov.wales/sites/default/files/publications/2019-05/fair-work-wales.pdf>

³ <https://www.ilo.org/global/topics/collective-bargaining-labour-relations/lang-en/index.htm>

⁴ <https://www.oecd.org/employment/collective-bargaining.htm>

⁵ <https://www.tuc.org.uk/making-wales-fair-work-nation>

⁶ <https://www.snct.org.uk/>

have to fund the Independent Wales Pay Review Body (IWPRB). Instead, it will mean building on existing tripartite arrangements, and sitting down with social partners to ensure a fair deal for teachers here in Wales.

We believe as social partnership as examined within this Bill, and more widely, collective bargaining for school teachers' pay and conditions, is a key example of how social partnership can truly be embedded in Wales.

Supply teacher agencies

The use of agencies in employing of supply teachers in Wales has been extremely disappointing, and is an example of how public procurement can have a negative impact on workers' rights. The previous iteration of the "Framework", created by the National Procurement Service, which saw a single supplier named as a 'preferred supplier', had unintended consequences across the sector, as aggressive agency practices saw many local authorities cease employing supply teachers directly. The roll-back of supply teachers' terms and conditions was accompanied by agency profits. Whilst the latest iteration of the Framework is no longer one 'preferred supplier', we believe the Bills provides an opportunity for Welsh Government to take steps, in the name of fair work, to ensure supply teachers have pay parity and access to terms and conditions, including pensions, of those who are employed within the school teachers' pay and conditions (Wales) document (STPC(W)D).

We have welcomed the Welsh Government/Plaid Cymru Cooperation Agreement commitment to "bring forward options for a more sustainable model of supply teaching with fair work at its heart"⁷. As the Bill passes through the Senedd, we believe this is an ideal opportunity for the Welsh Government to show their commitment to fair work, and set out plans for a supply teachers to have full access to teachers terms and conditions – truly embedding fair work.

Wales TUC response

We would highlight the following aspects of the Wales TUC response which we believe need attention from the Committee, and are critical in helping the Welsh Government in achieving its aims:

⁷ <https://gov.wales/co-operation-agreement-full-policy-programme-html>

- **Appointment of the Future Generations Commissioner:** Given the centrality of the Future Generations Office to the delivery of this Bill, the SPC should have a statutory consultative role in the appointment of the Future Generations Commissioner
- **Deputy Commissioner for Fair Work:** To ensure that the measures in the Bill are given a sufficient level of priority with the Future Generations Office, the Bill should create a Deputy Commissioner for Fair Work post.
- **Facilities time:** additional facilities time is likely to be necessary for unions to fulfil the obligations set by the social partnership duty. Under no circumstances can unions be expected to use existing facilities time to engage in this work (unless this is agreed at a local level).
- **Other strategic duties:** The social partnership duty should be expanded to require public bodies to consult with their recognised unions in relation to the Socio-Economic Duty and the Public Sector Equality Duty/
- **Welsh Government consulting the SPC in relation to its well-being objectives:** the explanatory memorandum states that it would not be appropriate for Welsh Government to consult with the SPC on its well-being objectives which it sets immediately after 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.”

We would argue that it is perfectly appropriate to consult the SPC here and it should be a duty in the Bill. It would otherwise serve as an odd exception to the principles behind the SPC’s role.

- the establishment of a Social Partnership Council;

NEU Cymru believes that placing the Social Partnership Council on a statutory footing, as set out in the Bill, is a sensible means by which to ensure that the Welsh Government can engage with the workforce. It is therefore our belief that that the establishment of the Social Partnership Council within this Bill is welcome.

NEU Cymru has represented the education trade unions on Shadow Social Partnership Council, which met very regularly during the first 18 months or so of the Covid-19 pandemic. Our place was nominated by the Wales TUC, and we believe that the approach of the Bill to have nominations through Wales TUC is sensible, as the recognised body for trade unions.

We would be concerned that the Bill codifies power for the First Minister to undermine the nomination process – it should be for trade unions to decide who represents them on such as council. We also believe any procedures for operating the SPC should be set by the SPC, and that the SPC should be fully resourced to carry out its functions successfully.

We believe the tri-partite arrangements, as set out on the face of the Bill, are right. We recognise other bodies may wish to seek recognition as representative of workers, but believe the clear legal precedent in UK law which identifies the role of trade unions in representing the workforce. Trade unions operate under a strict legal framework and are member-led representative bodies.

- 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;

NEU Cymru welcome that public bodies will need to consult with their recognised trade unions on delivering the objectives of the Wellbeing of the Future Generations Act.

We believe the list of public bodies could be wider, and should include: Tertiary Education and Research Commission for Wales (TERCW), further and higher education institutions and any other body which is relevant. We believe that schools must also function as fair work employers, and are keen to understand how local authorities will ensure this happens. We do not understand why charitable or other status is a barrier to being included in the Bill, as set out in the Explanatory Memorandum, especially as so much public money is being used.

Whilst we recognise some of these may not be considered ‘public bodies’, they have a significant amount of funding from the Welsh Government, so it is important that they are embedding fair work within their practices. We would ask that the Welsh Government make the list as expansive as possible.

We also believe this is an opportunity to embed these practices in those commissioned to undertake work on behalf of a public body. For example, the regional education consortia must engage with recognised education trade unions in everything they do, to ensure that they are delivering on the WFGA, and in particular fair work.

- 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 ;

NEU Cymru believes that it is welcome that the Welsh Government would consult with the trade unions to “taking all reasonable steps (in exercising its functions) to meet those objectives”, as set out in the WFG Act. However, we would be concerned that Welsh Ministers are not subjected to the same duties as other public bodies, and find the idea that this ‘undermines the democratic process’, as set out by the Minister, as concerning.

We would welcome that the Bill applied equally to Welsh Government as to other public bodies, and cannot see any argument against this.

- amendment of section 4 of the WFG Act 2015 by substituting ‘fair work’ for ‘decent work’ within the existing “A prosperous Wales” goal;

NEU Cymru welcomes this. We believe this is an opportunity for Wales to take a fresh look at what fair work means to Wales, and enshrine and share good practice fair work practices across the public sector and beyond. Wales’ Fair Work Commission report sets out what fair work means. This is an opportunity to celebrate our goals as a fair work nation, and to codify that, within parameters of the Welsh devolution settlement.

Fair work should be everyone's business in Wales. Everyone in work should have access to recognised trade unions, should be paid alongside their peers (on fair terms and conditions) and know their health and safety is paramount – all the recommendations set out in the Fair Work Wales Report should be adhered to.

- 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

NEU Cymru welcomes this duty, and believes the public bodies named in the Bill should be widened, as set out above.

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

NEU Cymru welcomes this aspect of the Bill, and believes the duties should be widened as far as is legislatively possible. As we have highlighted above, Welsh Government must ensure that procurement does not undermine any Welsh aspirations of fair work.

Transparency and redress are areas which need careful consideration in the Bill. Whilst Welsh Government may not wish to sanction public bodies, it is clear to us that there needs to be strong mechanisms for non-compliance to protect the workforce in Wales.

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

NEU Cymru welcomes reporting duties. As stated above, we do believe there should be more redress built into the public procurement aims within the Bill. It seems that sanctions for non-compliance are unclear, and should be very transparent, and incentivise compliance.

For more information please contact:

Mary van den Heuvel,

Senior Policy Officer: 