

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 22

Ymateb gan: TUC Cymru | Response from: TUC Wales



Wales TUC submission to the Equality and Social Justice Committee's Stage 1 consultation on the Social Partnership and Public Procurement (Wales) Bill

To supplement our oral evidence on 4 July 2022, we are providing written evidence to highlight the most important points we would like the Committee to consider.

Overall, we strongly welcome the Bill and believe it delivers on the Welsh Government's commitments to strengthen social partnership and put it on a statutory footing, as well as deliver greater social value from procurement. While we agree that it would not be appropriate for financial penalties to be introduced as a compliance mechanism for any of the duties in the Bill, we would like to see a clear statement from Welsh Government regarding the resources and approach to implementation they plan to take, as implementation in the initial few years will be very important to bring about a cultural shift in public bodies. The following points identify areas where this could be strengthened again, or highlight aspects of the Bill which are especially significant to the union movement.

Part 1: The Social Partnership Council for Wales (SPC)

We would like to propose the following to strengthen the Part 1:

- **The SPC's autonomy:** The SPC – rather than Welsh Government – should determine the SPC's procedures. In particular, Welsh Government should not be able to revise the SPC's procedures as it wishes (Section 7(5)) as this would give Welsh Government a disproportionate amount of power in the partnership and potentially undermine confidence in tripartite working. The SPC should also have the same powers in relation to subgroups, including the public procurement subgroup.
- **Union side nominations:** As per Section 5(2), Wales TUC must remain as the nominating body for the SPC – we could not support a Bill which gave Welsh Government the power to determine the union side membership because this would take workers' power to determine their representation away, and Wales TUC is the only suitable structure to work with the entire union movement to determine nominees. We recognise that the purpose of the SPC is to ensure workers' voice around the table, and to this end we will need to work with non-Wales TUC affiliated trades unions to ensure they are invested in the SPC's work (as we already do for the WPC). As with this, we will establish a SPC union side as the democratic group to determine union-side nominations to the SPC, and protocols for how those with SPC seats engage with the wider union-side and existing sectoral arrangements.
- **The 'Prosperous Wales' goal:** The SPC should also have a statutory role to be consulted on any guidance Welsh Government issues in relation to the 'A prosperous Wales' goal more broadly than is currently set out in the Bill (which only refers to the Social Partnership Duty). This is because the goal, including the 'fair work' aspect as amended by the Bill, is so relevant to social partners' interests and Welsh

Government's guidance on it must take into account both workers' and employers' interests fairly.

- **Other strategic duties:** We would like to explore whether the SPC should also have a statutory role in relation to the Socio-Economic Duty and the Public Sector Equality Duty.

Part 2: Social Partnership and Sustainable Development, including the Social Partnership Duty

We would like to propose the following to strengthen Part 2:

- **Resources:** Implementation will require resource so that all social partners – including trades unions - are able to realise this duty. However, it is not yet clear what those resources would look like as there is a significant knowledge gap about what it would look like to effectively engage across the new structures. We have existing trade union education structures and those structures will have to be mobilised to support implementation, but much of the detail around how the application of the duty will work within workplaces needs to be determined by social partners at a local level.
- **Extending the reach of the Social Partnership Duty:** While the duty can only apply in law to public bodies already covered by the WFGA currently, we would like to see both pieces of legislation amended to ensure more workers are covered by a version of the duty, including schools, so that the entire devolved public sector can benefit.
- **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 to ensure that the SPC has confidence in the Commissioner's role in relation to social partnership.
- **Deputy Commissioner for Fair Work and union seats on PSBs:** To ensure that the measures in the Bill are given a sufficient level of priority within the Future Generations Office, the Bill should create a Deputy Commissioner for Fair Work post to support public bodies on the delivery of the redefined Prosperous Wales goal including fair work. A seat for unions on Public Service Boards would further strengthen this at a local level, and support the delivery of the WFGA which already requires PSB's to engage with unions (which is currently not realised). This would address the remaining aspects of WFGA activity which do not have social partner input and ensure the necessary focus on fair work as part of the WFGA, reflecting the harms caused by the problems with Wales's labour market.
- **Facility time:** additional facility time will be necessary for unions to fulfil the obligations set by the social partnership duty. Under no circumstances can unions be expected to use existing facility time to engage in this work (unless this is agreed at a local level).

- **Other strategic duties:** Exploring how the social partnership duty could 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 could be the next step in strengthening social partnership working at a local level. The Bill could therefore be amended to make reference to the possibility of this being added to the duty by Welsh Ministers at a later stage, without requiring additional primary legislation.
- **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 and the idea that social partners should have a role in relation to setting well-being objectives.

Part 3: Socially Responsible Public Procurement

We would like to propose the following to strengthen Part 3:

- **Social partnership:** the social partnership duty does not apply in relation to the production of procurement strategies. This should be amended to comply with the social partnership principle, so that unions should be consulted on public bodies procurement strategies.
- **Registered social landlords, FE and HE:** The exclusion of housing associations, higher education and further education institutions from the list of contracting authorities required to comply with the Socially Responsible Public Procurement Duties is justified on the basis of putting their charitable/[NPISH status](#) (Welsh Government's oral evidence referenced NPISH status but the explanatory memorandum references charitable status) at risk. We believe that if Welsh Government can legislate to cover organisations of this type then they should, so unless the position is that it cannot do so then the legislation should be amended to cover these bodies.
- **Triggering a procurement investigation:** It is not clear what can trigger a procurement investigation by Welsh Government, and whether a report from a trade union or the SPC could trigger an investigation into a contracting authority. Welsh

Government should provide greater clarity on this to explain the intention behind this.

- **Integrity of the register:** There could potentially be an issue with the contracts register if the guidance on what is considered commercially sensitive is too broadly drawn. This could create similar issues to the Economic Contract where excessive confidentiality concerns have arguably limited the Contract's impact. Welsh Government should state the principles around what commercial confidentiality will mean in this context, and emphasise how important transparency is to the success of this legislation.
- **Proportionality:** Again the definition of proportionality as it applies to the measurements on procurement will be central to its impact. Our concern would be that an overly conservative approach will limit the impact and so again there must be a commitment to provide clear guidance on this.