

# Social Partnership and Public Procurement (Wales) Bill

[CONSULTATION DRAFT]

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# Social Partnership and Public Procurement (Wales) Bill

[CONSULTATION DRAFT]

An Act of Senedd Cymru to make provision about public bodies consulting with trade unions when taking certain action related to the carrying out of sustainable development; the Welsh Ministers taking action in pursuit of a fair work goal when carrying out sustainable development; contracting authorities contributing to sustainable development and the fair work goal when carrying out public procurement; establishing a Social Partnership Council for Wales to provide information and advice to the Welsh Ministers on certain matters; and for connected purposes.

**Having been passed by Senedd Cymru and having received the assent of Her Majesty, it is enacted as follows:**

## PART 1

### SOCIAL PARTNERSHIP

#### 1 Social partnership duty

- (1) In carrying out sustainable development, when a public body does the things stated in subsection (2) it must, in so far as is reasonable, consult with its recognised trade unions.
- (2) The things referred to in subsection (1) are –
  - (a) setting well-being objectives under section 3(2)(a) of the WFGA 2015;
  - (b) making decisions of a strategic nature about the reasonable steps the body takes (in the exercise of its functions) to meet those objectives under section 3(2)(b) of the WFGA 2015.
- (3) When consulting under subsection (1), a public body must, in so far as is reasonable –
  - (a) start the consultation at the formative stage of the process of setting objectives or making decisions,
  - (b) seek compromise and consensus, and
  - (c) have regard to any guidance published by the Welsh Ministers about consulting with recognised trade unions.
- (4) The Welsh Ministers must consult with the Social Partnership Council for Wales before publishing any guidance referred to in subsection (3)(c).
- (5) For the purposes of subsection (1), “sustainable development” has the meaning given by section 2 of the WFGA 2015.

## 2 Social partnership reports

- (1) A public body must prepare, in respect of each financial year, a report of what it has done to comply with the duty imposed under section 1.
- (2) The report must be agreed with the public body's recognised trade unions or contain a statement explaining why it was not agreed.
- (3) The public body must publish the report, and submit it to the Social Partnership Council for Wales, as soon as reasonably practicable after the end of the financial year.
- (4) Where the public body is the Welsh Ministers, they must lay the report before the Senedd as soon as reasonably practicable after the end of the financial year.

## 3 Interpretation of Part 1

In this Part –

“public body” (“*corff cyhoeddus*”) has the meaning given by section 6 of the WFGA 2015;

“trade union” (“*undeb llafur*”) has the meaning given by section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) (and “recognised” (“*cydnabyddedig*”) in relation to a trade union has the meaning given by section 178(3) of that Act).

## PART 2

### FAIR WORK

## 4 Fair work goal

In this Act, the “fair work goal” means Wales being a nation where work is characterised by –

- (a) [ ];
- (b) [ ];
- (c) [ ].

## 5 The Welsh Ministers' fair work duty

- (1) In carrying out sustainable development, the Welsh Ministers must –
  - (a) set and publish objectives that are designed to maximise the Welsh Ministers' contribution to achieving the fair work goal, and
  - (b) take all reasonable steps (in exercising their functions) to meet those objectives.
- (2) The steps that may be taken under subsection (1)(b) include –
  - (a) [ ];
  - (b) [ ];

(c) [ ].

- (3) The Welsh Ministers may set objectives relating to Wales or any part of Wales.
- (4) The Welsh Ministers may revise objectives published under subsection (1)(a) and must publish any revised objectives.
- 5 (5) Subsection (1)(b) applies to revised objectives.
- (6) Before publishing objectives under subsection (1)(a), or revised objectives under subsection (4), the Welsh Ministers must consult the Social Partnership Council for Wales.
- 10 (7) For the purposes of subsection (1), “sustainable development” has the meaning given by section 2 of the WFGA 2015.

## 6 Fair work reports

- (1) The Welsh Ministers must—
- (a) publish, in respect of each financial year, a report of the progress they have made towards meeting their objectives published under section 5, and
- 15 (b) lay a copy of the report before the Senedd,
- as soon as reasonably practicable following the end of the financial year to which the report relates.
- (2) In preparing a report under this section, the Welsh Ministers must consider whether they should revise their objectives.

## PART 3

### SOCIALLY RESPONSIBLE PUBLIC PROCUREMENT

#### CHAPTER 1

#### INTRODUCTION

##### *Key concepts*

## 25 7 Public contracts

- (1) In this Part, a “public contract” means a contract between one or more economic operators and one or more contracting authorities; and having as its object the execution of works, the supply of products or the provision of services.
- (2) For the purposes of this Part, a framework agreement is treated as a public contract (and
- 30 references to “public contract” are to be construed accordingly).

## 8 Contracting authorities

- (1) In this Part, a “contracting authority” means a body, office-holder or other person listed in Part 1 of the Schedule.

(2) But—

(a) the persons listed in Part 2 of the Schedule are not contracting authorities for the purposes of sections 10(4)(c), 12, 18, 19, 20, 21 or 22 (that relate to social public workforce clauses);

(b) the Welsh Ministers are not a contracting authority for the purposes of sections 15, 16, 21, 22 or 27.

(3) In this Part, a contracting authority's area is the area by reference to which the authority primarily exercises its functions, disregarding any areas outside Wales.

(4) The Welsh Ministers may by regulations amend this section, and the Schedule, so as to modify the meaning of a contracting authority.

## 9 Public procurement

For the purposes of this Part, references to "public procurement" are to a contracting authority—

(a) designing and carrying out any procedure preceding the award of a public contract including, in particular, seeking bids and selecting economic operators;

(b) drafting, negotiating and awarding a public contract;

(c) managing a public contract after it has been awarded;

and references to "procurement" are to be construed accordingly.

## CHAPTER 2

### SOCIALLY RESPONSIBLE PROCUREMENT DUTY

#### *The socially responsible procurement duty*

## 10 Socially responsible procurement duty

(1) A contracting authority must seek to improve the economic, social, environmental and cultural well-being of its area by carrying out public procurement in a socially responsible way.

(2) A contracting authority carries out public procurement in a socially responsible way by taking action, in accordance with the sustainable development principle, aimed at contributing to the achievement of—

(a) the well-being goals listed in section 4 of the WFGA 2015, and

(b) the fair work goal (within the meaning given by section 4),

referred to for the purposes of this Part as the "socially responsible procurement goals".

(3) A contracting authority must set and publish objectives designed to maximise its contribution to achieving the socially responsible procurement goals.

- (4) In taking action aimed at contributing to the achievement of the socially responsible procurement goals, a contracting authority must –
- (a) take all reasonable steps to meet the objectives mentioned in subsection (3) when it carries out public procurement in relation to any prescribed contract;
  - 5 (b) take the particular actions referred to in section 11 when it carries out public procurement in relation to a major construction contract;
  - (c) take the particular actions referred to in section 12 when it carries out public procurement in relation to an outsourcing services contract.
- (5) Before setting objectives under subsection (3) –
- 10 (a) a contracting authority must consult the Welsh Ministers;
  - (b) the Welsh Ministers (as a contracting authority) must consult the Social Partnership Council for Wales.
- (6) Despite subsection (1), a contracting authority must not include provisions in a prescribed contract that –
- 15 (a) are not linked to the subject matter or performance of the contract;
  - (b) are not proportionate (taking into account the estimated value of the contract);
  - (c) would conflict with any other enactment or rule of law relating to public procurement.
- (7) For the purposes of subsection (2), “the sustainable development principle” has the meaning given by section 5 of the WFGA 2015.
- 20 (8) In this Part, a “prescribed contract” means –
- (a) a major construction contract (see section 11),
  - (b) an outsourcing services contract (see section 12), and
  - 25 (c) any other public contract of a description prescribed by the Welsh Ministers by regulations.

## 11 Socially responsible procurement duty: major construction contracts

- (1) The particular actions mentioned in section 10(4)(b) are –
- 30 (a) having regard to model social public works clauses published by the Welsh Ministers under section 13;
  - (b) in designing and carrying out procedures preceding the award of the major construction contract, considering whether the contract should include social public works clauses;
  - (c) in negotiating and awarding the contract, taking all reasonable steps to –
- 35 (i) include any social public works clauses it considers should be included;
  - (ii) ensure that clauses included in the contract can be implemented;

(d) in managing the contract, taking all reasonable steps to ensure that any social public works clauses included in the contract are implemented;

(see sections 13 to 17 for further provision about the meaning of “social public works clauses” and their application to major construction contracts).

- 5 (2) In this Part, a “major construction contract” is a public contract with an estimated value equal to or greater than £2,000,000, which is –
- (a) a public works contract,
  - (b) a works contract, or
  - (c) a works concession contract.
- 10 (3) The Welsh Ministers may by regulations amend this section to modify the meaning of a major construction contract.

## 12 Socially responsible procurement duty: outsourcing services contracts

- (1) The particular actions mentioned in section 10(4)(c) are –
- 15 (a) having regard to the public services outsourcing and workforce code published by the Welsh Ministers under section 18;
- (b) in designing and carrying out procedures preceding the award of the outsourcing services contract, considering whether the contract should include social public workforce clauses;
- (c) in negotiating and awarding the contract, taking all reasonable steps to –
- 20 (i) include any social public workforce clauses it considers should be included;
- (ii) ensure that clauses included in the contract can be implemented;
- (d) in managing the contract, taking all reasonable steps to ensure that any social public workforce clauses included in the contract are implemented;
- 25 (see sections 18 to 23 for further provision about the public services outsourcing and workforce code, the meaning of “social public workforce clauses” and their application to outsourcing services contracts).
- (2) In this Part, “an outsourcing services contract” means a contract under which –
- (a) a requirement to provide a public service provided by, or previously provided by, a contracting authority is transferred to another person, or
  - (b) another person agrees to undertake any other function undertaken by, or previously undertaken by, a contracting authority;
- and “outsourced” is to be construed accordingly.

*Social public works clauses***13 Social public works clauses in major construction contracts**

(1) The Welsh Ministers must publish model clauses for major construction contracts (“social public works clauses”) designed to bring about the improvements to economic, social, environmental and cultural well-being listed under each category in subsection (2).

(2) The categories are –

*Category 1:* Ensuring and enforcing prompt payments.

*Category 2:* Providing employment opportunities to younger people, older people, the long term unemployed, people with disabilities or people who are otherwise disadvantaged.

*Category 3:* Ensuring compliance with legal obligations in relation to employment rights (including the minimum and living wage), health and safety, and trade union representation.

*Category 4:* Providing appropriate training for workers.

*Category 5:* Providing opportunities to small and medium sized enterprises and voluntary organisations to execute works, supply products or provide services.

*Category 6:* Requiring sustainable management of natural resources, reduction of greenhouse gas emissions, and protection or enhancement of the natural environment and biodiversity.

(3) A reference in this Part to a contracting authority including social public works clauses in major construction contracts –

(a) is a reference to all of the model contract clauses published in respect of each of the categories in subsection (2), and

(b) means incorporating clauses that have the same or substantially the same effect as the published model contract clauses.

**14 Social public works clauses in subcontracts**

(1) Subsection (2) applies if a contracting authority intends to include social public works clauses in a major construction contract it agrees with an economic operator (a “contractor”) (the authority having considered whether to do so in accordance with section 11(1)(b)).

(2) The authority must take all reasonable steps to ensure that the obligations in the social public works clauses are implemented where the contractor enters into a subcontract with any other economic operator (a “subcontractor”).

(3) Examples of the reasonable steps that could be taken under subsection (2) include—

- (a) ensuring that social public works clauses having the same or substantially the same effect as those in the major construction contract are included in any subcontract—
  - (i) the contractor enters into with a subcontractor, and
  - (ii) the subcontractor enters into with a subsequent subcontractor (and so on);
- (b) ensuring that the contracting authority can enforce the obligations in social public works clauses under the major construction contract or under a subcontract;
- (c) requiring the contractor to obtain the contracting authority's consent before entering into a subcontract, with consent being made conditional upon social public works clauses having the same or substantially the same effect as those included in the major construction contract being included in any subcontract;
- (d) requiring the contractor to inform the contracting authority if it intends to enter into a subcontract which does not include social public works clauses having the same or substantially the same effect as those included in the major construction contract;
- (e) requiring the contractor to monitor the extent any obligations in social public works clauses are implemented where the contractor has entered into a subcontract with any other economic operator.

20 **15 Social public works clauses: notifying the Welsh Ministers**

- (1) A contracting authority must notify the Welsh Ministers if, in relation to a major construction contract—
- (a) the authority does not intend to include social public works clauses in the contract (despite having considered whether to do so in accordance with section 11(1)(b));
  - (b) social public works clauses are not included in the contract (despite the authority having taken all reasonable steps in accordance with section 11(1)(c)(i));
  - (c) there is no process in place for ensuring that obligations in social public works clauses are implemented (despite the authority having taken all reasonable steps in accordance with section 11(1)(c)(ii));
  - (d) there is no process in place for ensuring that obligations in social public works clauses are implemented where the contract is subcontracted (despite the authority having taken all reasonable steps in accordance with section 14(2)).

- (2) A notification under subsection (1) must be made as soon as reasonably practicable and give the authority's reasons.

## 16 Social public works clauses: Welsh Ministers' response

- (1) Where the Welsh Ministers receive a notification from a contracting authority under section 15(1), they must consider whether they are satisfied with the reasons given in the notification.

- (2) In doing so, the Welsh Ministers may –

(a) consult the authority;

(b) by notice require the authority to provide any documents or other information as the Welsh Ministers may require for the purposes of subsection (1) in such form or manner as may be specified in the notice;

(c) provide the Social Partnership Council for Wales with a copy of the notification under section 15(1) and any documents or other information received under paragraph (b).

- (3) A contracting authority must provide any documents or other information it is required to provide under subsection (2) as soon as reasonably practicable.

- (4) If, following consideration under subsection (1), the Welsh Ministers are not satisfied, they may direct the contracting authority to take all reasonable steps to –

(a) include social public works clauses in the major construction contract,

(b) put processes in place for ensuring that obligations in social public works clauses are implemented, or

(c) put processes in place for ensuring that obligations in social public works clauses are implemented where the contract is subcontracted.

- (5) The Welsh Ministers must take any action taken under subsections (2)(a) or (b) as soon as reasonably practicable.

## 17 Social public works clauses: Welsh Ministers' contracts

- (1) The Welsh Ministers must publish a statement if, in relation to a major construction contract –

(a) they do not intend to include social public works clauses in the contract (despite having considered whether to do so in accordance with section 11(1)(b));

(b) social public works clauses are not included in the contract (despite having taken all reasonable steps in accordance with section 11(1)(c)(i));

(c) there is no process in place for ensuring that obligations in social public works clauses are implemented (despite having taken all reasonable steps in accordance with section 11(1)(c)(ii));

(d) there is no process in place for ensuring that obligations in social public works clauses are implemented where the contract is subcontracted (despite having taken all reasonable steps in accordance with section 14(2)).

(2) A statement made under subsection (1) must be made as soon as reasonably practicable and give the Welsh Ministers' reasons.

*Social public workforce clauses and code of practice on outsourcing public services*

## **18 Public services outsourcing and workforce code**

(1) For the purposes of maintaining or improving the quality of public services or other functions outsourced by contracting authorities, the Welsh Ministers must publish a code of practice (the "public services outsourcing and workforce code") about employment and pensions matters related to outsourcing services contracts.

(2) The Welsh Ministers may revise the code and must publish the revised code.

(3) The Welsh Ministers must lay a copy of the code and any revision before the Senedd.

## **19 Social public workforce clauses in outsourcing services contracts**

The public service outsourcing and workforce code must include model contract clauses ("social public workforce clauses"), which in particular –

(a) are designed to ensure that members of staff employed by contracting authorities in providing services, or undertaking functions, to be outsourced will, if they wish, become employed by the person providing those services, or undertaking those functions, when they are outsourced ("transferring staff");

(b) are designed to protect the terms and conditions and pensions arrangements of transferring staff;

(c) are designed to ensure that the terms and conditions of other members of staff employed by the person providing the services, or undertaking the functions, who are involved in providing those services, or undertaking those functions, are no less favourable overall than those of transferring staff, and that the pensions arrangements of those other members of staff are reasonable;

(d) make provision supplementary to the matters referred to in paragraphs (a) to (c).

## **20 Social public workforce clauses in subcontracts**

(1) Subsection (2) applies if a contracting authority intends to include social public workforce clauses in an outsourcing services contract it agrees with an economic operator (a "contractor") (the authority having considered whether to do so in accordance with section 12(1)(b)).

(2) The authority must 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 (a “subcontractor”).

(3) Examples of the reasonable steps that could be taken under subsection (2) include—

- 5 (a) ensuring that social public workforce clauses having the same or substantially the same effect as those in the outsourcing services contract are included in any subcontract—
- (i) the contractor enters into with a subcontractor, and
  - (ii) the subcontractor enters into with a subsequent contractor (and so on);
- 10 (b) ensuring that the contracting authority may enforce the obligations in social public workforce clauses under the outsourcing services contract or under a subcontract;
- (c) requiring the contractor to obtain the contracting authority’s consent before entering into a subcontract, with consent being made conditional upon social public workforce clauses having the same or substantially the same effect as those
- 15 included in the outsourcing services contract being included in any subcontract;
- (d) requiring the contractor to inform the contracting authority if it intends to enter into a subcontract which does not include social public workforce clauses having the same or substantially the same effect as those included in the outsourcing services contract;
- 20 (e) requiring the contractor to monitor the extent any obligations in social public workforce clauses are implemented where the contractor has entered into a subcontract with any other economic operator.

## 21 Social public workforce clauses: notifying the Welsh Ministers

- 25 (1) A contracting authority must notify the Welsh Ministers if, in relation to an outsourcing services contract—
- (a) the authority does not intend to include social public workforce clauses in the contract (despite having considered whether to do so in accordance with section 12(1)(b));
  - (b) social public workforce clauses are not included in the contract (despite the
  - 30 authority having taken all reasonable steps in accordance with section 12(1)(c)(i));
  - (c) there is no process in place for ensuring that obligations in social public workforce clauses are implemented (despite the authority having taken all reasonable steps in accordance with section 12(1)(c)(ii));

(d) there is no process in place for ensuring that obligations in social public workforce clauses are implemented where the contract is subcontracted (despite the authority having taken all reasonable steps in accordance with section 20(2)).

(2) A notification under subsection (1) must be made as soon as reasonably practicable and give the authority's reasons.

## 22 Social public workforce clauses: Welsh Ministers' response

(1) Where the Welsh Ministers receive a notification under section 21(1), they must consider whether they are satisfied with the reasons given in the notification.

(2) In doing so, the Welsh Ministers may –

(a) consult the contracting authority;

(b) by notice require the authority to provide any documents or other information as the Welsh Ministers may require for the purposes of subsection (1) in such form or manner as may be specified in the notice;

(c) provide the Social Partnership Council for Wales with a copy of the notification under subsection 21(1) and any documents or other information received under paragraph (b).

(3) A contracting authority must provide any documents or other information it is required to provide under subsection (b) as soon as reasonably practicable.

(4) If, following consideration under subsection (1), the Welsh Ministers are not satisfied, they may direct the contracting authority to take all reasonable steps to –

(a) include social public workforce clauses in the outsourcing services contract,

(b) put processes in place for ensuring that obligations in social public workforce clauses are implemented, or

(c) put processes in place for ensuring that obligations in social public workforce clauses are implemented where the contract is subcontracted.

(5) The Welsh Ministers must take any action taken under subsections (2)(a) or (b) as soon as reasonably practicable.

## 23 Social public workforce clauses: Welsh Ministers' contracts

(1) The Welsh Ministers must publish a statement if, in relation to an outsourcing services contract –

(a) they do not intend to include social public workforce clauses in the contract (despite having considered whether to do so in accordance with section 12(1)(b));

(b) social public workforce clauses are not included in the contract (despite having taken all reasonable steps in accordance with section 12(1)(c)(i));

- (c) there is no process in place for ensuring that obligations in social public workforce clauses are implemented (despite having taken all reasonable steps in accordance with section 12(1)(c)(ii));
- (d) there is no process in place for ensuring that obligations in social public workforce clauses are implemented where the contract is subcontracted (despite having taken all reasonable steps in accordance with section 20(2)).
- (2) A statement under subsection (1) must be made as soon as reasonably practicable and give the Welsh Ministers' reasons.

*Procurement strategies*

10 **24 Procurement strategy**

- (1) A contracting authority must prepare a strategy (a "procurement strategy") setting out how the authority intends to carry out public procurement.
- (2) A procurement strategy must, in particular –
- 15 (a) state how the authority intends to ensure that it will carry out public procurement in a socially responsible way in accordance with section 10(1) (in so far as that duty applies in relation to its procurements);
- (b) state how the authority intends to take all reasonable steps to meet the objectives it sets under section 10(3) when it carries out public procurement in relation to any prescribed contract;
- 20 (c) state the authority's approach to securing value for money;
- (d) state how the authority intends to make payments due under a contract promptly and, unless this is not reasonably practicable, no later than 30 days after an invoice (or similar claim) is submitted;
- 25 (e) address other matters as may be specified by regulations made by the Welsh Ministers.
- (3) A contracting authority must –
- (a) review its procurement strategy each financial year,
- (b) make any revisions that the authority considers appropriate from time to time, and
- 30 (c) publish the strategy, and any revision, as soon as reasonably practicable after it has been prepared or revised.
- (4) Two or more contracting authorities may fulfil their obligations under this section by preparing a joint procurement strategy.

**CHAPTER 3****REPORTING AND ACCOUNTABILITY****25 Annual socially responsible procurement reports**

- 5 (1) A contracting authority that has awarded any prescribed contracts during a financial year must prepare and publish an annual report on its public procurement as soon as reasonably practicable after the end of that year.
- (2) The report must include—
- 10 (a) a summary of the procurements that during the year led to the award of a prescribed contract or were intended to lead to the award of such a contract;
  - (b) a review of the extent to which all reasonable steps were taken in those procurements to meet the objectives set under section 10(3);
  - (c) to the extent that it considers that further steps could be taken in future procurements to meet the objectives set under section 10(3), a statement of how the authority intends to do so;
  - 15 (d) a summary of the procurement the authority expects to carry out in the next two financial years;
  - (e) other information as may be specified by regulations made by the Welsh Ministers.

**26 Contracts register**

- 20 (1) A contracting authority must create, maintain and publish a contracts register.
- (2) A contracts register is a register of public contracts entered into by the contracting authority that are of a description prescribed by the Welsh Ministers by regulations (“registrable contracts”).
- 25 (3) In relation to each registrable contract, a contracts register must contain the following information—
- (a) the date of award of the contract;
  - (b) the name of the contractor;
  - (c) the subject matter;
  - (d) the estimated value;
  - 30 (e) the start date;
  - (f) the end date provided for in the contract (disregarding any option to extend the contract) or, where there is no date specified, a description of the circumstances in which the contract will end;
  - (g) the duration of any period for which the contract can be extended.
- 35 (4) But an authority may withhold from publication an entry, or part of an entry, in the register if it considers that publishing it would—
- (a) impede enforcement of the law or otherwise be contrary to the public interest,

- (b) prejudice the commercial interests of any person, or
  - (c) prejudice fair competition between economic operators.
- (5) An authority may delete an entry in its contracts register only after the contract to which it relates has expired or been terminated.

5 **27 Procurement investigations**

- (1) The Welsh Ministers may investigate how a contracting authority carries out public procurement.
- (2) An investigation may relate to a specific public procurement carried out by a contracting authority or to its public procurement activities more generally.
- 10 (3) The Welsh Ministers may, by notice, require a contracting authority to provide such documents or other information as the Welsh Ministers may require for the purposes of an investigation under this section, in such form or manner as may be specified in the notice.
- (4) A contracting authority must –
- 15 (a) provide reasonable assistance to the Welsh Ministers in relation to an investigation;
- (b) comply with a notice under subsection (3) as soon as reasonably practicable.
- (5) After completing the investigation, the Welsh Ministers may –
- (a) make recommendations to the contracting authority;
- 20 (b) publish a report of the results of the investigation;
- (c) lay a copy of any report published before the Senedd.

**28 Welsh Ministers' annual report on public procurement**

- (1) As soon as reasonably practicable after the end of a financial year, the Welsh Ministers must prepare a report on public procurement in Wales that year.
- 25 (2) The report must, in particular, include information about –
- (a) the annual procurement reports published under section 25(1);
- (b) the results of any investigations under section 27.
- (3) The Welsh Ministers must publish the report and lay a copy of it before the Senedd.

**CHAPTER 4**

30 **GENERAL**

**29 Guidance**

- (1) The Welsh Ministers may issue guidance about the operation of this Part.
- (2) Guidance may, in particular, make provision about –
- 35 (a) meeting the requirement in section 10(1) to carry out public procurement in a socially responsible way;

- (b) taking all reasonable steps to meet objectives set under section 10(3);
- (c) social public works clauses;
- (d) the public services outsourcing and workforce code;
- (e) social public workforce clauses;
- 5 (f) consultation during the preparation of a procurement strategy;
- (g) the form and content of procurement strategies and annual procurement reports;
- (h) the process by which a contracting authority approves its procurement strategy;
- (i) joint procurement strategies.

10 (3) A contracting authority must have regard to relevant guidance published by the Welsh Ministers.

(4) The Welsh Ministers must consult the Social Partnership Council for Wales before publishing guidance under this Part.

### 30 Regulations

15 (1) A power to make regulations under this Part—

- (a) is exercisable by statutory instrument;
- (b) includes the power to make different provision for different purposes;
- (c) includes the power to make incidental, supplementary, consequential, transitional, transitory or saving provision.

20 (2) A statutory instrument containing regulations made under section 10(8)(c) or 11(3) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Senedd.

(3) Any other statutory instrument containing regulations made under this Part is subject to annulment in pursuance of a resolution of the Senedd.

### 31 Interpretation of Part 3

25 (1) In this Part—

“the Concession Contracts Regulations” (*“y Rheoliadau Contractau Consesiwn”*) means the Concession Contracts Regulations 2016 (S.I. 2016/273);

“contracting authority” (*“awdurdod contractio”*) has the meaning given in section 8;

30 “economic operator” (*“gweithredwr economaidd”*) means any person who offers the execution of works, the supply of products or the provision of services on the market;

35 “framework agreement” (*“cytundeb fframwaith”*) means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the main terms governing public contracts (call-off contracts) to be awarded during a given period, in particular with regard to pricing the things envisaged to be procured and, where appropriate, their quantity;

“outsourcing services contract” (*“contract allanoli gwasanaethau”*) has the meaning given in section 12(2);

“prescribed contract” (*“contract rhagnodedig”*) has the meaning given in section 10(8);

“the Public Contracts Regulations” (*“y Rheoliadau Contractau Cyhoeddus”*) means the Public Contracts Regulations 2015 (S.I. 2015/102);

“public procurement” (*“caffael cyhoeddus”*) has the meaning given in section 9;

“the public services outsourcing and workforce code” (*“y cod allanoli gwasanaethau cyhoeddus a’r gweithlu”*) has the meaning given in section 18(1);

“public workforce clauses” (*“cymalau gweithlu cyhoeddus”*) has the meaning given in section 18(2);

“public works contract” (*“contract gweithiau cyhoeddus”*) has the meaning given by regulation 2(1) of the Public Contracts Regulations;

“the Utilities Contracts Regulations” (*“y Rheoliadau Contractau Cyfleustodau”*) means the Utilities Contracts Regulations 2016 (S.I. 2016/274);

“voluntary organisation” (*“sefydliad gwirfoddol”*) has the same meaning as “relevant voluntary organisation” within the meaning of section 74(2) of the Government of Wales Act 2006 (c. 32);

“works” (*“gweithiau”*) has the meaning given by paragraph 2 of regulation 2(1) of the Public Contracts Regulations;

“works concession contract” (*“contract consesiwn gweithiau”*) has the meaning given by regulations 2(1) and 3(2) of the Concession Contracts Regulations;

“works contract” (*“contract gweithiau”*) has the meaning given by regulation 2(1) of the Utilities Contracts Regulations.

- (2) For the purposes of this Part, the estimated value of a contract is to be determined in accordance with regulation 6(1) of the Public Contracts Regulations.

## PART 4

### THE SOCIAL PARTNERSHIP COUNCIL

#### *Establishment and procedure*

#### **32 Social Partnership Council for Wales**

- (1) There is to be a Social Partnership Council for Wales (“SPC”).
- (2) The SPC is to consist of the following members—
- (a) members from the Welsh Government (“Welsh Government members”),
  - (b) 9 representatives of employers in Wales (“employer representatives”), and
  - (c) 9 representatives of trade unions in Wales (“trade union representatives”).

- (3) The Welsh Government members are to include the First Minister and, where invited by the First Minister from time to time –
- (a) any other Welsh Minister;
  - (b) any Deputy Welsh Minister;
  - (c) the Counsel General.
- (4) The First Minister must appoint all the employer representatives and trade union representatives (collectively, “appointed members”).
- (5) The First Minister must take all reasonable steps to appoint the initial 9 employer representatives and the initial 9 trade union representatives within 6 months beginning with the day after this subsection comes into force.
- (6) In this Act, a reference to the “Social Partnership Council for Wales” or “SPC” is a reference to the members of the SPC acting jointly; accordingly, a function expressed as a function of the SPC is a function of each member that may only be exercised jointly with the other members.

**33 Employer representatives**

The employer representatives are to consist of individuals representing public body employers, private sector employers, voluntary organisation employers, higher education employers and further education employers.

**34 Trade union representatives**

The trade union representatives are to consist of individuals representing unions recognised by each category of employer referred to in section 33.

**35 Nomination of appointed members**

- (1) Before appointing employer representatives, the First Minister must seek nominations from persons or bodies who the First Minister considers represent the views of the categories of employer referred to in section 33.
- (2) Before appointing trade union representatives, the First Minister must seek nominations from the body representing trade unions in Wales known as Wales TUC Cymru.
- (3) When appointing employer representatives or trade union representatives, the First Minister must have regard to any nominations made.

**36 Duration of appointments**

- (1) Appointed members are appointed for 3 years unless –
  - (a) the First Minister terminates the appointment by notifying the member in writing, or
  - (b) the appointed member resigns by notifying the First Minister in writing.
- (2) The First Minister must fill any vacancies as soon as reasonably practicable.

**37 Meetings, procedures and administrative support**

- (1) The SPC must meet at least 3 times in each 12 month period beginning with the day after the First Minister has made all the initial appointments mentioned in section 32.
- (2) Where possible, the First Minister must chair the SPC's meetings.
- 5 (3) Where it is not possible for the First Minister to chair a meeting, the meeting must be chaired by a Welsh Minister nominated by the First Minister.
- (4) Within 6 months beginning with the day after this subsection comes into force, the Welsh Ministers must specify and publish—
  - (a) the quorum for SPC meetings, and
  - 10 (b) the procedures to be followed by the SPC, in so far as they are not specified in this Act.
- (5) The SPC's procedures must include—
  - (a) the procedures for arranging meetings including notice to be given to attendees and how attendees may add agenda items;
  - 15 (b) the procedure for resolving a disagreement between members relating to the exercise of the SPC's functions;
  - (c) the procedures for providing information and advice to the Welsh Ministers.
- (6) The Welsh Ministers must make administrative support available to the SPC.

**38 Subgroups**

- 20 (1) The SPC may establish subgroups.
- (2) A subgroup may —
  - (a) carry out any function delegated to it by the SPC;
  - (b) help the SPC carry out its functions in any ways specified by the SPC.
- (3) A subgroup —
  - 25 (a) must be chaired by a member of the SPC, and
  - (b) may include other members of the SPC and other individuals.

**39 Procurement subgroup**

- (1) The SPC must take all reasonable steps to establish a procurement subgroup within six months beginning with the day after this subsection comes into force.
- 30 (2) See section 41 for further provision about the procurement subgroup.

*Functions***40 Provision of information and advice to the Welsh Ministers**

- (1) The SPC may provide information and advice to the Welsh Ministers about the following matters –
- (a) the duty imposed on public bodies by section 1(1);
  - (b) the publication of guidance under section 1(3)(c);
  - (c) the duties imposed on the Welsh Ministers by section 5.
- (2) If the Welsh Ministers request information or advice from the SPC on a matter referred to in subsection (1), the SPC must provide it as soon as reasonably practicable.

**41 Provision of information and advice to the SPC by procurement subgroup**

- (1) The procurement subgroup may provide information and advice to the SPC about the functions conferred on contracting authorities and the Welsh Ministers under Part 3.
- (2) The SPC may –
- (a) provide to the Welsh Ministers information or advice received from the procurement subgroup, or
  - (b) revise such information or advice and provide it as revised to the Welsh Ministers.
- (3) If the Welsh Ministers request information or advice from the SPC about a matter referred to in subsection (1), the SPC must –
- (a) seek that information or advice from the procurement subgroup, and
  - (b) provide it, or revise it and provide it as revised, as soon as reasonably practicable.
- (4) If a procurement subgroup has not yet been established under section 39(1), the SPC may nevertheless provide information and advice to the Welsh Ministers about a matter referred to in subsection (1).

**42 Publication of information and advice**

The Welsh Ministers must publish information and advice provided by the SPC.

*Interpretation***43 Interpretation of Part 4**

In this Part –

“Deputy Welsh Minister” means a person holding office under section 50 of the Government of Wales Act 2006;

“employer” has the same meaning as in the Employment Rights Act 1996 (c. 18);

“further education employer” means an employer in the further education sector within the meaning of section 91(3) of the Further and Higher Education Act 1992 (c. 13);

“higher education employer” means an employer in the higher education sector within the meaning of section 91(5) of the Further and Higher Education Act 1992;

“voluntary organisation employer” means an employer that is a “relevant voluntary organisation” within the meaning of section 74(2) of the Government of Wales Act 2006;

“private sector employer” means an employer that is not –

- (a) a body, office or holder of an office whose functions are wholly or mainly of a public nature,
- (b) a voluntary organisation employer,
- (c) a further education employer, nor
- (d) a higher education employer;

“public body employer” means an employer that is a public body.

## PART 5

### FINAL PROVISIONS

#### 44 General interpretation

In this Act –

“financial year” means –

- (a) in relation to a public body other than a Local Health Board or NHS trust, the period of 12 months ending with 31 March;
- (b) in relation to a Local Health Board, an accounting year within the meaning given by the order made under section 11 of the National Health Service (Wales) Act 2006 (c. 42) establishing the Board;
- (c) in relation to an NHS trust, an accounting year within the meaning given by the order made under section 18 of that Act establishing the trust;

“the Senedd” means Senedd Cymru;

“the WFGA 2015” means the Well-being of Future Generations (Wales) Act 2015 (anaw 2).

#### 45 Coming into force

- (1) This Act comes into force on such day as the Welsh Ministers may by order appoint.
- (2) An order under subsection (1) may appoint different days for different purposes.
- (3) The power of the Welsh Ministers to make an order under subsection (1) is exercisable by statutory instrument.

**46 Short title**

The short title of this Act is the Social Partnership and Public Procurement (Wales) Act 2021.

SCHEDULE  
(as introduced by section 8)

CONTRACTING AUTHORITIES

PART 1

CONTRACTING AUTHORITIES

- 5
- 1 The Senedd Commission.
- 2 Public bodies within the meaning of the WFGA 2015.
- 3 The Welsh Language Commissioner.
- 4 The Future Generations Commissioner for Wales.
- 10 5 The Children’s Commissioner for Wales.
- 6 The Commissioner for Older People in Wales.
- 7 The governing body of a higher education institution in Wales.
- 8 The governing body of a further education institution in Wales.
- 9 Social Care Wales.
- 15 10 The Welsh Ambulance Services NHS Trust.
- 11 Digital Health Care Wales.
- 12 The Welsh Revenue Authority.
- 13 Transport for Wales.
- 14 The Royal Commission on the Ancient and Historical Monuments of Wales.
- 20 15 Registered social landlords.

PART 2

SOCIAL PUBLIC WORKFORCE CLAUSES: AUTHORITIES THAT ARE EXEMPT

- 16 The Senedd Commission.
- 17 The Welsh Language Commissioner.
- 25 18 The Future Generations Commissioner for Wales.
- 19 The Children’s Commissioner for Wales.
- 20 The Commissioner for Older People in Wales.
- 21 The governing body of a higher education institution in Wales.
- 22 The governing body of a further education institution in Wales.
- 30 23 Registered social landlords.

PART 3

INTERPRETATION

- 24 In this Schedule –

- 5
- (a) “further education institution” means an institution falling within section 91(3) of the Further and Higher Education Act 1992;
  - (b) “higher education institution” means an institution falling within section 91(5) of that Act;
  - (c) “registered social landlords” means persons registered in the register maintained under section 1 of the Housing Act 1996 (c. 52).