



Llywodraeth Cymru
Welsh Government

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The potential for the Social Partnership and Public Procurement (Wales) Act 2023 to support equality and diversity

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Contents

Issue

Background

Recommendation

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Issue

1. This paper explores the potential of the SPC to support and enhance equality and diversity and invites the views of SPC members on this issue.

Background

2. During Senedd scrutiny of what is now the Social Partnership and Public Procurement (Wales) Act 2023 (“the SPPP Act”) a number of stakeholders emphasised the potential of the legislation as a means of promoting greater equality and diversity in workplaces in Wales.

3. This matter was considered further by the Social Partnership Forum (a forerunner to the SPC), with members of the Forum agreeing that a paper should be submitted to the SPC, once established, explaining how the duties and structures created by the SPPP Act might be utilised to achieve maximum positive impact on equality and diversity. This paper provides that information and invites views from SPC members.

Context: the Equality Act 2010

4. The Equality Act 2010 protects people from discrimination because of:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race

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- religion or belief
- sex
- sexual orientation
- eliminate discrimination, harassment and victimisation and other conduct prohibited by the 2010 Act;

5. The 2010 Act also introduced the Public Sector Equality Duty (“PSED”) which requires that those subject to the duty (These are listed in Schedule 19 to the Act and include a range of Welsh public bodies, including LHBs and NHS Trusts, local authorities, governing bodies of schools, and Welsh Ministers) must have due regard to the need to:

- eliminate discrimination, harassment and victimisation and other conduct prohibited by the 2010 Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not;
- foster good relations between people who share a protected characteristic and those who do not.

6. The aim of the PSED is to ensure that those subject to it consider advancement of equality when carrying out their day-to-day business. The duty does not apply to the protected characteristic of marriage and civil partnership.

Context: what the SPPP Act says about equality and diversity

7. Part 3 of the of the SPPP Act deals with socially responsible public procurement. Section 27 of Part 3 includes the following provisions:

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 the Table in subsection (2).

(2) The categories and improvements are:

Category: Payments.

Improvements: ensuring and enforcing prompt payments.

Category: Employment.

Improvements: providing employment opportunities to younger people, older people, the long term unemployed, people with disabilities or people who may otherwise be disadvantaged (for example because of their race, religion or belief, sex, gender identity or sexual orientation).

Category: Compliance.

Improvements: health and safety, and trade union representation.

Category: Training.

Improvements: providing appropriate training for workers.

Category: Sub-contracting

Improvements: providing opportunities to small and medium sized enterprises and voluntary organisations to execute works, supply products or provide services.

Category: Environment

Improvements: requiring sustainable management of natural resources, use of sustainable materials, resilience to the impact of climate change, reduction of greenhouse gas emissions, and enhancement of the natural environment and biodiversity.

Issues for consideration by the SPC

8. The SPC could provide a vehicle for providing information and advice from social partners on relevant issues, enabling Ministers to hear the views and experiences of workers and employers. Trade unions have democratic, representative structures which have potential to capture the experiences, concerns, and views of those with protected characteristics. In addition, many unions' internal structures also build in proportional representation.

9. Section 8 of the Act also provides for the SPC to establish relevant subgroups. A subgroup of the SPC may (a) carry out any function under section 1 of the Act delegated to it by the SPC; and (b) help the SPC carry out its functions in any ways specified by the SPC. Officials and the Deputy Minister have discussed with social partners the need to ensure that members nominated and appointed to the SPC are drawn from a diverse range of backgrounds; however, with only 18 places on the Council itself for trusted social partners it would seem appropriate to consider whether you as members of the SPC should establish an Equality and Diversity Subgroup to bring the widest possible representation, and to ensure that the lived experience of people with protected characteristics is fully taken into account in the work of the Council. Although it will be for the SPC itself to decide whether it wishes to establish any subgroups. Any subgroups would be chaired by an SPC member and may consist of other individuals (not just members of the SPC itself).

10. The social partnership duty on public bodies will require them to seek compromise or consensus with their recognised trade unions or other staff representatives when setting their well-being objectives under the Well-being of Future Generations (Wales) Act and when making strategic decisions about the reasonable steps bodies are taking to meet those objectives. Genuine dialogue between public sector employers and worker representatives / trade unions with the aim of improving decision-making and enhancing well-being could compliment and support the Public Sector Equality Duty and its implementation

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by public bodies.

11. A Guide to Fair Work – sets out (1) what fair work means in practice; (2) why promoting fair work is beneficial for organisations, workers, and wider well-being; and (3) some practical steps organisations can take to continue on their fair work journey. “Fair work is the presence of observable conditions at work which means workers are fairly rewarded, heard and represented, secure and able to progress in a healthy, inclusive working environment where rights are respected”. The pursuit of fair work, therefore, and the reference now made to it in the Well-being of Future Generations (Wales) Act, have the potential to impact significantly on equality and diversity.

12. The socially responsible procurement duty set out in the Act will require certain public bodies to consider socially responsible public procurement, to set objectives in relation to well-being goals which those bodies must meet when carrying out procurement, and to publish a procurement strategy. In addition, in relation to certain types of contract, public bodies will be required to carry out contract management duties to ensure that socially responsible outcomes are pursued through supply chains. Around £8 billion is spent annually on public procurement in Wales; the new procurement duties set out in the Act therefore have the potential to act as a significant lever to help enhance equality and diversity in Wales.

13. The matter was discussed at the Social Partnership Forum (the precursor to the SPC) in July and again in October. Some members of the Forum met with Welsh Government officials to consider options for strengthening the initial paper submitted to the SPF. Concerns were raised by the trade unions at that time that an Equality and Diversity sub-group might reduce the status of equality and diversity work at the SPC itself. The trade unions felt standing agenda items on the SPC could be a more effective means of ensuring the voices of those from diverse backgrounds are heard, though it was highlighted that this may create a ‘talking shop’. To overcome this and ensure that the lived experience of people with protected characteristics are fully considered, an alternative approach could

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be the use of existing expert groups to which the SPC could turn for relevant advice depending on the topic under consideration.

Recommendation

14. SPC Members are invited to give consideration as to how the new duties and social partnership structures established by the SPPP Act should be deployed to achieve maximum positive impact on equality and diversity.

15. SPC Members are asked specifically to consider whether to establish an Equality and Diversity Subgroup to support its work; and to ensure that the voice and experience of people with protected characteristics is fully taken into account in information or advice given to the Welsh Ministers on matters relating to social partnership, fair work or socially responsible procurement.

16. SPC Members are also invited to consider whether the SPC should have recourse to relevant expert groups that reflect the voice and lived experience of people with protected characteristics in order to inform its future work.

17. If SPC Members agree that a recommendation on the establishment of an Equality and Diversity Subgroup, more detailed proposals will be drawn up on the potential composition, role and inclusion of expert advice to the SPC of such a group.

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