

*These notes refer to the Social Partnership and Public Procurement (Wales) Act 2023 (c.1) which received Royal Assent on 24 May 2023*

# **SOCIAL PARTNERSHIP AND PUBLIC PROCUREMENT (WALES) ACT 2023**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes are for the Social Partnership and Public Procurement (Wales) Act which was passed by Senedd Cymru on 6 June 2022 and received Royal Assent on 24 May 2023.
2. They have been prepared by the Social Partnership and Fair Work Directorate of the Welsh Government to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Senedd. The notes should be read in conjunction with the Act but are not part of it.
3. The notes are not meant to be a comprehensive description of the Act. Where a section or part of a section is self-explanatory and does not seem to require any further explanation or comment, none is provided.

### **GENERAL OVERVIEW OF THE ACT**

4. The Act provides for a framework to promote the well-being of the people of Wales by enhancing sustainable development (including by improving public services) through social partnership working, promoting fair work and socially responsible procurement.

### **Part 1**

#### **The Social Partnership Council**

##### ***Section 1 – Social Partnership Council for Wales***

5. **Section 1** establishes the Social Partnership Council for Wales (“SPC”) and describes its core function together with the purposes for which it may exercise that function.
6. The SPC’s core function is to provide information and advice to the Welsh Ministers on certain matters. This function is wider than merely advising the Welsh Ministers and could include the creation or provision of, among other things, statistics, factual summaries, copies of documents (whether publicly available or otherwise) and so on. There is no explicit restriction on the type of information or advice that the SPC can provide.
7. The purposes for which the SPC may provide information and advice to the Welsh Ministers are to enhance the four types of well-being (economic, environmental, social, and cultural) promoted by the Well-being and Future Generations Act (Wales) 2015 (“the 2015 Act”). A key element of this is adopting social partnership principles to improve public services in Wales. These purposes are deliberately broad to reflect the wide range of topics the SPC will discuss.

8. The SPC may provide information and advice on, essentially, those matters dealt with by the Act:
  - (a) the social partnership duties under Part 2 of the Act;
  - (b) the pursuit of the “A Prosperous Wales” well-being goal by public bodies when carrying out sustainable development under the 2015 Act;
  - (c) the functions conferred on contracting authorities and the Welsh Ministers under Part 3 (socially responsible procurement).

In relation to (b), the SPC’s remit includes the “pursuit” of the “A Prosperous Wales” goal by all bodies required to carry out sustainable development under section 3 of the 2015 Act. For example, the SPC would be able to provide information or advice to the Welsh Ministers about activity they were taking to improve the economic well-being of Wales if that activity was linked to the “A Prosperous Wales” goal.

9. The Act provides for flexibility as to how SPC advice or provision of information is instigated (it can be initiated by either the SPC itself or the Welsh Ministers). The SPC is therefore able to act on its own initiative if it becomes aware of a topic in relation to which it determines it should provide information or advice. Where information or advice is requested from the SPC by the Welsh Ministers, it must be provided as soon as reasonably practicable.

### ***Section 2 – Membership of the Social Partnership Council for Wales***

10. [Section 2](#) provides that the SPC will ordinarily be chaired by the First Minister of Wales and consist of three types of members – Welsh Government members (who could be any of the Welsh Ministers or Deputy Welsh Ministers, the Counsel General or any member of staff of the Welsh Government), nine representatives of employers in Wales and nine representatives of workers in Wales.
11. There is no numerical limit on the number of Welsh Government members of the SPC which will allow for different individuals to attend the SPC at different times. Which individuals act as Welsh Government members at a particular meeting of the SPC is to be determined by the First Minister.
12. Both the employer and worker representatives will be appointed by the First Minister. The fact that there will be an equal number of employer and worker representatives reflects the collaborative nature of social partnership and the equality of employer and worker representatives in the process of advising the Welsh Ministers.
13. [Section 2\(4\)](#) requires the First Minister to take all reasonable steps to appoint nine employer and nine worker representatives within six months of section 2(4) itself coming into force.
14. [Section 2\(5\)](#) provides that the SPC is a collective group that can only act jointly in its functions. Therefore, members cannot individually perform the functions of the SPC, this must be done jointly with each other member. This approach reflects the collaborative nature of social partnership.

### ***Sections 3 and 4 – Employer and worker representatives***

15. These sections make provision about who can be appointed as an employer or worker representative by the First Minister. Employer representatives must be individuals that the First Minister considers represent certain categories of employer in Wales as specified in section 3. Worker representatives must be individuals the First Minister considers represent staff working for employers in each of those categories in Wales.
16. The First Minister’s discretion in appointing individuals is broad in that the only requirement for appointment is that the First Minister has formed a view that a particular individual represents relevant organisations or staff (as the case may be). However, this

discretion is, in practice, significantly curtailed by the nomination process contained in section five.

17. Employer and worker representatives carry out their role as individuals, regardless of their connection with any organisation external to the SPC (e.g. a public body or a trade union).
18. It is intended that employer and worker representatives will be able to represent a wide variety of constituencies and perspectives.

### ***Section 5 - Nomination of appointed members***

19. **Section 5(1)** provides that, before appointing employer representatives the First Minister must seek nominations from organisations the First Minister considers represent the views of each category of employers to be represented by employer representatives. However, the First Minister is not obliged to accept nominations for employee representatives and may appoint one or more individuals not so nominated.
20. The First Minister must have regard to any nominations made when appointing employer representatives. This will ensure that a wide range of organisations in both the private and public sectors can influence the appointment of employer representatives to the SPC.
21. **Section 5(2)** provides that before appointing worker representatives, the First Minister must seek nominations from Wales TUC Cymru.
22. The First Minister may only appoint worker representatives who have been nominated by Wales TUC Cymru. This will ensure that worker representatives are genuinely representative of the collective experience of the workforce.
23. However, the First Minister is not obliged to appoint all or any individual nominated by Wales TUC Cymru to be a worker representative. Therefore, the First Minister could decide not to appoint one or more Wales TUC Cymru nominees and ask for others to be nominated.
24. The intention is create a diverse group by providing for a wide range of employers and workers to be represented on the SPC.

### ***Section 6 - Duration of appointments***

25. This section provides that employer or worker representatives are appointed for three years unless either the First Minister terminates their appointment or they resign by notifying the First Minister.
26. The legislation does not prevent the First Minister re-appointing an individual to the SPC or representatives serving consecutive terms.
27. The section also requires that the First Minister must fill any representative vacancy as soon as reasonably practicable. This provision will minimise disruption to the work of the SPC and ensure that, as far as possible, numerical parity is maintained between employer and worker representatives.

### ***Section 7- Meetings, procedures and administrative support***

28. This section deals with the operation of the SPC. It specifies certain procedures – the frequency of meetings, the chairing of the SPC by the First Minister where possible and arrangements where this is not possible. In circumstances where the SPC is not to be chaired by the First Minister, the SPC will be chaired by another Welsh Minister or Deputy Minister nominated by the First Minister.
29. It also requires that the Welsh Ministers specify and publish all other procedures to be followed by the SPC, together with the quorum for SPC meetings, within six months

of section 7(4) coming into force. The publishing of the SPC's procedures will ensure the greatest possible transparency. The Welsh Ministers may, having consulted with the SPC, amend any of the procedures they have specified and any amendments must be published.

30. The section also specifies matters which the procedures to be published by the Welsh Ministers must deal with and requires the Welsh Ministers to provide administrative support to the SPC.
31. The intention is to provide for a basic framework of procedures without being so prescriptive as to impair the flexibility of the SPC's work.

### ***Section 8 – Subgroups***

32. **Section 8** provides the SPC with the power to create subgroups to carry out its functions or assist it in doing so. Each subgroup must be chaired by a member of the SPC but may include both SPC members and other individuals as members. A subgroup may only exercise functions or aspects of functions that have been delegated to it by the SPC. There is no limit to the number of subgroups the SPC may create.
33. The possibility of including non-SPC representatives as members of subgroups will allow subgroups to draw on the maximum possible range of expertise and knowledge. Among other things, subgroups could be used by the SPC to ensure its functions are carried out more efficiently, to provide advice to the Welsh Ministers on a discreet issue or to ensure that its functions can be carried out in the periods between meetings of the full SPC.
34. Although a subgroup will only be able to exercise those functions delegated to it by the SPC, there is no restriction on which functions of the SPC can be delegated. As a result, SPC subgroups may produce information or advice to the Welsh Ministers in much the same way as the SPC itself (provided the relevant functions have been properly delegated).

### ***Section 9 – Public procurement subgroup***

35. This section requires the SPC to take all reasonable steps to establish a specific subgroup concerned with public procurement within six months of section 9(1) coming into force. It further requires that the Welsh Ministers specify and publish the quorum for the public procurement subgroup meetings, produce guidance to which the SPC must have regard when appointing members including guidance for the purpose of ensuring its membership is appropriately representative and the procedures to be followed during meetings.
36. The section also sets out specific matters which the procedures to be published by the Welsh Ministers must deal with, these are the same as those covered in the procedures which are specified and published in relation to the full SPC. The procedures for the subgroup can be revised in the same way as SPC procedures. The intention, as with the SPC, is to balance consistency with flexibility.
37. As with other subgroups, the members of the public procurement subgroup may consist of both members from the SPC and other individuals but must be chaired by a member of the SPC.

### ***Section 10 - Provision of information and advice to the SPC by public procurement subgroup***

38. This section sets out the functions of the public procurement subgroup which are to provide information or advice to the SPC about the functions placed on contracting authorities and the Welsh Ministers under the socially responsible procurement duties set out in Part 3 of the Act. If the Welsh Ministers request information or advice from the

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SPC about such matters, the SPC must seek this from the public procurement subgroup and provide it to the Welsh Ministers as soon as reasonably practicable.

39. In addition, this section provides for the revision of information and advice by the SPC, before it is sent to the Welsh Ministers.
40. Where the Welsh Ministers consult the SPC subgroup under sections 30 or 36 of the Act, the public procurement subgroup must provide information and advice that it considers appropriate as soon as reasonably practicable.
41. The Welsh Ministers may consult directly with the public procurement subgroup under sections 30(2)(d) or 36(2)(d) (that is in relation to notifications provided by contracting authorities in connection with social public works clauses received under section 29 or social public workforce clauses received under section 35), in which event the public procurement subgroup must provide the information or advice as soon as reasonably practicable.

### ***Section 11 & 12 – Meeting remotely and expenses***

42. **Section 11** allows the SPC or an SPC subgroup to hold meetings remotely, for example via the internet or telephone. These provisions will increase the flexibility of the SPC and enable it to carry out its functions effectively.
43. **Section 12** enables the Welsh Ministers to meet the expenses of SPC employer and worker representatives as well as members of subgroups. Such payments would be subject to any relevant policies or procedures put in place by the Welsh Ministers.

### ***Section 13 – Supplementary powers***

44. This section provides the SPC with supplementary powers. These are exercisable both in relation to its own functions or the functions of a subgroup.

## **Part 2 – Social Partnership and Sustainable Development**

### **Introduction**

45. Section 2 of the 2015 Act defines “sustainable development” as the process of improving the economic, social and environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals set out in section 4 of that Act. Section 3 of the 2015 Act requires public bodies to carry out sustainable development. In fulfilling this duty, they must set and publish well-being objectives. These are objectives designed to maximize a body’s contribution to the achieving each of the well-being goals. Public bodies must take all reasonable steps, in exercising their functions, to meet their objectives.
46. **Part 2** introduces a social partnership duty on public bodies and a separate but similar social partnership duty on the Welsh Ministers. The social partnership duties apply when a public body is carrying out sustainable development in accordance with the 2015 Act, and will ensure that when making key strategic decisions in pursuit of improved well-being in Wales under the 2015 Act, public bodies are fully and properly informed by the experience and knowledge of their staff and (for the Welsh Ministers) by the views of social partners in Wales as represented by the SPC.
47. Public bodies are subject to an annual reporting requirement and a requirement to submit the reports to the SPC.
48. **Part 2** also amends the well-being goals by substituting the reference to “decent work” within the “A prosperous Wales” goal with “fair work”.

### ***Section 15 - Overview of Part and interpretation***

49. **Section 15** provides an overview of Part 2 of the Act.
50. Subsections (2) and (3) define “sustainable development” and “public body” for the purposes of Part 2 by reference to the definitions set out in the 2015 Act. The public bodies subject to the social partnership duty in section 16 are those listed in section 6 of the 2015 Act, with the exception of Welsh Ministers who are subject to the social partnership duty in section 17.

### ***Section 16 – Social partnership duty***

51. **Section 16(1)** imposes the social partnership duty on each specified public body. That duty is, in so far as is reasonable, to ‘seek consensus or compromise’ with its recognised trade unions (or where there is none such with other representatives of its staff) when taking specified actions.
52. The duty applies when a public body is setting its well-being objectives under section 3(2)(a) of the 2015 Act and when it is taking decisions of a strategic nature about the reasonable steps it needs to take to meet those objectives in accordance with section 3(2)(b) of the 2015 Act. It does not apply to the day- to-day decisions of a public body.
53. **Section 16(2)** sets out a number of specific procedural requirements relating to the social partnership duty, which a public body must comply with when ‘seeking consensus or compromise’. The procedural requirements set out are intended to ensure that trade unions or other representatives of the staff of public bodies are fully and properly involved in setting objectives or making other strategic decisions relating to sustainable development. The duty to share and consult on sufficient information at a formative stage of the process and to allow sufficient time for proposals to be considered by trade unions or other staff representatives is the minimum expected of a process of genuine engagement. These requirements will promote a more consistent and collaborative approach to strategic decision-making by public bodies, in turn ensuring that objectives set and key decisions made by public bodies properly takes account of the views, knowledge and experiences of that body’s workforce.

### ***Section 17 – Social Partnership duty: Welsh Ministers***

54. **Section 17(1)** provides that the Welsh Ministers must consult with the SPC when they are taking decisions of a strategic nature about the reasonable steps to take to meet their well-being objectives in accordance with section 3(2)(b) of the 2015 Act. It does not apply to day- to-day decisions taken by the Welsh Ministers.

### ***Section 18 – Social partnership reports***

55. **Section 18** provides that a public body must prepare and publish an annual report and submit it to the SPC. The report must be agreed with the public body’s recognised trade unions (or where there is no recognised trade union) other representatives of its staff; or contain a statement explaining why it was not agreed.

### ***Section 19 – Social partnership reports: Welsh Ministers***

56. **Section 19** provides that the Welsh Ministers must prepare and publish an annual report. This must be submitted to the SPC and laid before the Senedd. The report must be agreed with the SPC or contain a statement explaining why it was not agreed.

### ***Section 20 - Fair Work***

57. **Section 20** amends the description of the “A Prosperous Wales” well-being goal in section 4 of the 2015 Act by substituting “fair work” for “decent work”. This amendment will result in a requirement that public bodies consider fair work when

setting and taking action to meet objectives designed to maximise their contribution to achieving the “A prosperous Wales” well-being goal.

### **Part 3 – Socially Responsible Public Procurement**

#### **Chapter 1**

58. Chapter 1 sets out definitions of a “public contract”, a “contracting authority” and “public procurement”. It also makes provision for the Welsh Ministers to make regulations to amend the meaning of a contracting authority.
59. Contracting authorities are listed in Schedule 1.
60. The Welsh Ministers are a contracting authority for the purposes of this Part in all but two circumstances where it would be impractical for them to be considered a contracting authority. Under sections 29 and 35 a contracting authority must notify the Welsh Ministers in relation to the inclusion of social public works clauses in major construction contracts and social public workforce clauses in outsourcing of contracts. In turn, under sections 30 and 36 the Welsh Ministers are required to review any notifications provided by contracting authorities and subsequently publish the outcome of the review into the notification. In addition, under section 41 the Welsh Ministers have a power to investigate how a contracting authority carries out public procurement.

#### **Chapter 2**

##### **Section 24 - Socially responsible procurement duty**

61. This section sets out an overarching duty on contracting authorities, requiring them to seek to improve the economic, social, environmental and cultural well-being of their areas by carrying out public procurement in a socially responsible way.
62. Subsection (2) provides that this means that they must take action, in accordance with the sustainable development principle, aimed at achieving the well-being goals in the 2015 Act.
63. Subsection (3) requires contracting authorities to set and publish objectives (“socially responsible procurement objectives”) in relation to their public procurement designed to maximise the authorities’ contributions towards the well-being goals.
64. This section also introduces a category of public procurement in respect of “prescribed contracts”. These fall into three categories, as follows. The first category is major construction contracts. These are defined in section 25. The second category is outsourcing services contracts. These are defined in section 26. The third category is any other public contract described in regulations by the Welsh Ministers. When carrying out public procurement in respect of prescribed contracts subsection (5) provides that contracting authorities must take all reasonable steps to meet their socially responsible procurement objectives.
65. Two constraints are placed by subsection (6) upon this duty to “take all reasonable steps” to meet objectives. The first is that any provisions included in a contract in relation to these objectives must be proportionate with respect to the contract value. The second is that the provisions must not conflict with any other relevant procurement-related legislation.

##### **Section 25 - Socially responsible procurement duty: major construction contracts**

66. This section introduces particular actions that are required in respect of a “major construction contract”.
67. Major construction contracts are defined as public works contracts or works contracts or works concession contracts with an estimated total value over £2m (inclusive of VAT).

This includes both framework agreements and contracts entered into as a result of a framework agreement where the estimated value exceeds £2m. Public works contracts, works contracts and works concession contracts are all defined in section 45(1).

68. The main action is a duty on contracting authorities to consider whether “social public works clauses” (as published by the Welsh Ministers under section 27) should be included in any major construction contract they propose to award, and to take reasonable steps to ensure they can be implemented. The clauses are designed to bring about improvements to economic, social, environmental and cultural well-being listed under categories as set out in section 27.
69. If a decision is taken to include the clauses, in the subsequent management of the contract the contracting authority must take all reasonable steps to ensure that the obligations in the clauses are implemented.

### ***Section 26 - Socially responsible procurement duty: outsourcing services contracts***

70. Outsourcing services contracts are defined in subsection (2) as either a contract under which a public service that has been, or is currently, provided by a contracting authority is transferred to another organisation, or under which another organisation agrees to undertake any other function undertaken by, or previously undertaken by, a contracting authority.
71. This section sets out the particular actions that must be taken in relation to an outsourcing services contract (these are similar to the actions required in respect of major construction contracts).
72. The contracting authority must consider including “social public workforce clauses” in any relevant outsourcing services contract it proposes to award. Section 33 makes provision in connection with social public workforce clauses.
73. If they are included, in the subsequent management of the contract the contracting authority must take all reasonable steps to ensure that the obligations in the clauses are implemented.

### ***Section 27 - Social public works clauses in major construction contracts***

74. This section requires the Welsh Ministers to publish model clauses for major construction contracts (“social public works clauses”) designed to bring about improvements to economic, social, environmental and cultural well-being listed under the categories set out in the Table in section 27. In summary, these improvements cover: prompt payment for suppliers; providing employment opportunities to younger and disadvantaged people; ensuring compliance with legislation in relation to employment rights; providing appropriate training for workers; providing opportunities to SMEs when subcontracting; and certain environmental matters. The table can be amended in future through regulations.
75. “Including” social public works clauses in major construction contracts means including *all* of the model clauses, incorporating wording that will have the same or substantially the same effect as the published model contract clauses.

### ***Section 28 - Social public works clauses in subcontracts***

76. As well as taking all reasonable steps to ensure that the social public works clauses are implemented in contracts (see section 25) this section requires contracting authorities to take all reasonable steps to ensure that the obligations are implemented where a contractor enters into a subcontract.
77. This section also gives some examples of what is meant by “reasonable steps”. In summary these are: ensuring that clauses with the same or substantially the same effect are included in subcontracts, and throughout subsequent contracts in the supply chain;

ensuring that obligations within the clauses can be enforced; requiring contractors to obtain the consent of the contracting authority before appointing sub-contractors so that the authority can ensure that the clauses are included; requiring the contractor to inform the authority if it is not including the clauses in subcontracts; and requiring contractors to monitor the implementation of the clauses.

***Section 29 - Social public works clauses: notifying the Welsh Ministers***

78. There may be valid reasons why a contracting authority does not intend to include social public works clauses in major construction contracts. This section requires a contracting authority to notify the Welsh Ministers if, in relation to a major construction contract—
  - a. it does not intend to include the social public works clauses, or
  - b. despite taking reasonable steps to include them, they are not contained in a contract.
79. A contracting authority must also inform the Welsh Ministers if it has failed to pass the required obligation through supply chains via subcontracts, or has not put a process in place to manage their implementation.
80. A notification must be made as soon as possible giving the authority's reasons.

***Sections 30 and 31 - Social public works clauses: Welsh Ministers' response and contracts***

81. Where the Welsh Ministers receive a notification from a contracting authority under section 29 this section sets out the steps required of the Ministers.
82. Where the Welsh Ministers receive a notification, they are required under subsection (1) to publish a summary of it and they must consider whether they are satisfied with the reasons given in the notification. In doing so, they may under subsection (3) consult the authority and may, by notice, require documents or other information from a contracting authority (both of which they must do as soon as reasonably practicable (see subsection (7)), in the event of which that documentation or information must also be provided as soon as reasonably practicable. The Welsh Ministers may also consult with the public procurement subgroup.
83. In the event of being satisfied with the authority's reasons set out in the notification, the Welsh Ministers must publish a summary of their reasons for being satisfied. In the event of not being satisfied they may direct the contracting authority to take all reasonable steps to include social public works clauses in the major construction contract or in sub-contracts, and to put processes in place to ensure they are implemented. must publish any directions.
84. Subsection (6) provides that where they are not satisfied but do not issue directions, the Welsh Ministers must inform that SPC and must publish their reasons for not being satisfied and not issuing a direction.
85. Subsection (9) provides that the Welsh Ministers are not required to publish any information which would be exempt from disclosure under the Freedom of Information Act 2000.
86. **Section 31** makes provision for contracts let by the Welsh Ministers. They must publish a statement as soon as reasonably practicable if they do not intend to include social public works clauses in a major construction contract, including their taking reasonable steps to include them, they are not contained in a contract, or there is no process in place to manage their implementation, giving reasons.

***Section 32 - Public services outsourcing and workforce code***

87. This section requires the Welsh Ministers to publish a code of practice (the “public services outsourcing and workforce code”) about employment and pensions matters related to outsourcing services contracts. This is for the purpose of improving the quality of public services or other functions outsourced by contracting authorities. The “social public workforce clauses” (see section 33) are included as part of this Code.
88. Any subsequent revision to this Code must also be published by the Welsh Ministers and laid before the Senedd. The Welsh Ministers must consult with relevant stakeholders in developing or subsequently revising the public service outsourcing and workforce code.

***Sections 33 and 34 - Social public workforce clauses in outsourcing services contracts and in subcontracts***

89. The public services outsourcing and workforce code published under section 32 must include model contract clauses (“social public workforce clauses”), designed to ensure that members of staff employed to deliver a service can, if they wish, be transferred to the new employer that will be contracted to deliver the service. These clauses will also ensure that their terms and conditions of employment and pensions arrangements are protected.
90. The clauses are also designed to ensure that in the event of the new employer recruiting further members of staff to deliver the same service, the new members of staff are employed with terms and conditions that are no less favourable, and with pensions arrangements that are reasonable.
91. **Section 34** applies where a contracting authority intends to include social public workforce clauses into a outsourcing services subcontract. Section 34(2) requires contracting authorities to take all reasonable steps to ensure that the obligations in the social public workforce clauses are implemented into any subcontract which the contractor enters into with any other economic operator. Subsection (3) sets out examples of reasonable steps which may be taken. They include ensuring that clauses with the same or substantially the same effect are included in subcontracts, and throughout subsequent contracts in the supply chain; ensuring that they can be enforced; requiring contractors to obtain the consent of the contracting authority before appointing sub-contractors so that the authority can ensure that the clauses are included; requiring the contractor to inform the authority if it is not including the clauses in subcontracts; and requiring contractors to monitor the implementation of the clauses.

***Section 35 - Social public workforce clauses: notifying the Welsh Ministers***

92. **Section 35(1)** requires the contracting authority to notify the Welsh Ministers if it has not included, or does not intend to include, social public workforce clauses in the contract, including where the authority has taken reasonable steps to include them, or there is no process in place for ensuring that obligations in social public workforce clauses are implemented whether in a contract or subcontract.
93. Under subsection (2), the contracting authority’s notification and reasons for not including social public workforce clauses in the contract must be provided as soon as possible.

***Sections 36 and 37 - Social public workforce clauses: Welsh Ministers’ response and contracts***

94. Where the Welsh Ministers receive a notification, they are required under subsection (1) to publish a summary of it and they must consider whether they are satisfied with the reasons given in the notification. In doing so, they may under subsection (2) consult the authority and may, by notice, require documents or other information from a contracting authority (both of which they must do as soon as reasonably practicable

(see subsection (7)), in the event of which that documentation or information must also be provided as soon as reasonably practicable. The Welsh Ministers may also consult with the public procurement subgroup.

95. In the event of being satisfied with the authority's reasons set out in the notification, the Welsh Ministers must publish a summary of their reasons for being satisfied. In the event of not being satisfied they may direct the contracting authority to take all reasonable steps to include social public workforce clauses in the outsourcing services contract or in sub-contracts, and to put processes in place to ensure they are implemented. They must publish any directions.
96. Subsection (6) provides that where they are not satisfied but do not issue directions, the Welsh Ministers must inform that SPC and must publish their reasons for not being satisfied and not issuing a direction.
97. Subsection (9) provides that the Welsh Ministers are not required to publish any information which would be exempt from disclosure under the Freedom of Information Act 2000.
98. [Section 37](#) makes provision for contracts let by the Welsh Ministers. They must publish a statement as soon as reasonably practicable if they do not intend to include social public workforce clauses in an outsourcing contract, including their taking reasonable steps to include them, they are not contained in a contract, or there is no process in place to manage their implementation, giving reasons.
99. For contracts let by the Welsh Ministers, a statement must be published as soon as reasonably practicable by the Welsh Ministers if they do not intend to include social public workforce clauses in an outsourcing services contract, despite their taking reasonable steps to include them, they are not contained in a contract, or there is no process in place to manage their implementation, giving reasons.

### ***Section 38 - Procurement strategy***

100. This section requires contracting authorities to prepare and publish a "procurement strategy" setting out how the authority intends to carry out public procurement in a socially responsible way, how it intends to take reasonable steps to meet the objectives that it has set (see section 24) and how it intends to make payments promptly. Other matters to be included in procurement strategies may be set out in regulations made from time to time by the Welsh Ministers.
101. Under subsection (4), these strategies must be reviewed each year and any subsequent revisions must be published. Joint strategies may be published by two or more authorities.

## ***Chapter 3 – Reporting and Accountability***

### ***Section 39 – Annual socially responsible procurement reports***

102. [Section 39\(1\)](#) sets out a requirement on contracting authorities to publish an annual socially responsible procurement report as soon as possible at the end of each financial year.
103. Subsection (2) provides that these reports must include a summary of the prescribed procurements that led to the award of any contract within that financial year, a review of the steps that the authority has taken to meet its objectives, what (if any) further steps could be taken in future procurements to meet those objectives and a summary of procurement that is planned for the following two years, along with any other information as may be specified in regulations made by the Welsh Ministers.
104. Subsection (2)(e) requires the Welsh Ministers to set out in regulations information that contracting authorities should include in their annual reports, subsection (3)

specifies that must include information on the extent to which their public procurement activities are meeting their socially responsible procurement objectives by, for example contributing to the local economy, taking environmental and other social considerations – such as promoting and facilitating use of the Welsh language – into account.

#### ***Section 40 – Contracts register***

105. **Section 40(1)** requires each contracting authority to maintain and publish a contracts register. Subsection (2) provides that a register contains information on ‘registrable contracts’ which are of a description prescribed by the Welsh Ministers in regulations. Subsection (3) sets out the information required to be captured in respect of each registrable contract: its name, date of award, estimated value, the address of the contractor’s principal place of business, subject matter, start date, end date and any period for which it may be extended, as well as any other information which may be set out within regulations made by the Welsh Ministers.
106. Subsection (4) provides that contracting authorities are not required to register any information which they consider would impede law enforcement or not be in the public interest, would prejudice the commercial interests of a person or competition between economic operators. Under subsection (5), the information about any contract may only be deleted from the contract after the contract has either been terminated or expired.

#### ***Section 41 - Procurement investigations***

107. This section provides the Welsh Ministers with powers of investigation into how a contracting authority carries out public procurement. This could be in relation to a particular procurement or procurement activities more generally.
108. Under subsection (4) contracting authorities may be required by the Welsh Ministers to provide documents or other information for the purposes of an investigation. Subsection (5) provides that at the end of any investigation, the Welsh Ministers may make recommendations to the contracting authority, publish a report and/or lay a copy of any report before the Senedd.

#### ***Section 42 - Welsh Ministers’ annual report on public procurement***

109. **Section 42** requires the Welsh Ministers to publish, as soon as reasonably practicable after the end of a financial year, a report about public procurement in Wales. Subsection (2) provides that the report must summarise any investigations carried out under section 41 and information drawn from contracting authorities’ annual reports. Subsection (3) requires the Welsh Ministers to publish these reports and lay them before the Senedd.
110. **Part 4** contains provisions on subordinate legislation procedures; provides powers for the Welsh Ministers to make transitional, consequential etc. provisions; and makes provision in respect of commencement, interpretation, coming into force etc.

#### ***Section 43 – Guidance***

111. This section sets out details of the guidance that the Welsh Ministers may issue about Part 3 of the Act and to which contracting authorities must have regard when undertaking socially responsible procurement. Subsection (4) requires the Welsh Ministers to consult with the SPC and other stakeholders that they consider appropriate before issuing any guidance under this section.

#### ***Section 44 - Regulations***

112. This section makes provision about how regulations under Part 3 of the Act are to be made. This includes provision about the procedures of the Senedd that apply in relation to the regulations, and the ancillary provision (that is, supplemental, incidental,

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consequential, transitional, transitory or saving provision) that may be made in these regulations.

### **Section 45 - Interpretation of Part 3**

113. This section defines specific terms used in Part 3 of the Act and is self-explanatory.

### **Section 46 - General interpretation**

114. This section defines specific terms used in this Act and is self-explanatory.

### **Section 47 - Minor amendment of the WFGA 2015**

115. This section makes a minor amendment to section 9 of the WFGA 2015.

### **Section 48 - Coming into force**

116. Subsection (1) brings section 48 of the Act into force the day after the day of Royal Assent.

117. All other provisions of the Act come into force by order made by the Welsh Ministers (subsection (1)). Subsection (2) allows orders that bring provisions into force to appoint different days for different purposes and subsection (3) enables orders to make transitory, transitional and saving provision in connection with bringing provisions into force.

### **Section 49 - Short title**

118. This section provides that the short title of the Act is the Social Partnership and Public Procurement (Wales) Act 2023.

### **Schedule 1**

119. **Schedule 1** lists the organisations, bodies, and officeholders that are contracting authorities and therefore subject to the socially responsible procurement duties in Part of the Act.

### **Schedule 2**

120. **Schedule 2** makes provision for the review of socially responsible procurement objectives by each contracting authority in the event of the amendment of the well-being goals, to which contracting authorities must have regard when undertaking their duties under Part 3 of the Act. It also enables contracting authorities to review their objectives at any time. If a contracting authority revises its objectives they must be published as soon as reasonably practicable.

## **RECORD OF PROCEEDINGS IN SENEDD CYMRU**

121. The following table sets out the dates for each stage of the Act's passage through the Senedd. The Record of Proceedings and further information on the passage of this Act can be found on the Senedd website at:

<https://business.senedd.wales/mgIssueHistoryHome.aspx?IId=39479>

<i>Stage</i>	<i>Date</i>
Introduced	7 June 2022
Stage 1 - Debate	29 November 2022
Stage 2 Scrutiny Committee – consideration of amendments	23 January 2023

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<i>Stage</i>	<i>Date</i>
Stage 3 Plenary - consideration of amendments	07 March 2023
Stage 4 Approved by the Senedd	14 March 2023
Royal Assent	24 May 2023