



# Social Partnership and Public Procurement (Wales) Act 2023

2023 asc 1

## PART 3

### SOCIALLY RESPONSIBLE PUBLIC PROCUREMENT

#### CHAPTER 2

#### SOCIALLY RESPONSIBLE PROCUREMENT DUTY

##### *Social public works clauses*

#### **27 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—

TABLE 1

Category	Improvements
Payments	Ensuring and enforcing prompt payments.
Employment	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

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<b>Category</b>	<b>Improvements</b>
Compliance	or belief, sex, gender identity or sexual orientation). Ensuring compliance with legal obligations in relation to employment rights (including the minimum and living wage), health and safety, and trade union representation.
Training	Providing appropriate training for workers.
Sub-contracting	Providing opportunities to small and medium sized enterprises and voluntary organisations to execute works, supply products or provide services.
Environment	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.

- (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 improvements under 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.
- (4) The Welsh Ministers may by regulations amend subsection (2)—
- (a) to add a category, and improvements under that category, to the Table;
  - (b) to remove a category, and improvements under that category, from the Table;
  - (c) to amend a category or improvements under a category in the Table.

## **28 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 25(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);

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- (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.

## **29 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 25(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 25(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 25(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 28(2)).
- (2) A notification under subsection (1) must be made as soon as reasonably practicable and give the authority's reasons.

## **30 Social public works clauses: Welsh Ministers' response**

- (1) Where the Welsh Ministers receive a notification from a contracting authority under section 29(1), they must—
  - (a) publish a summary of the notification, and
  - (b) consider whether they are satisfied with the reasons given in it.
- (2) In considering whether they are satisfied with the reasons, 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 SPC public procurement subgroup (see section 9) with a copy of the notification under section 29(1) and any documents or other information received under paragraph (b);
  - (d) consult the SPC public procurement subgroup.

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- (3) If, following consideration under subsection (1), the Welsh Ministers are satisfied, they must publish a summary of their reasons for being satisfied.
- (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) Where the Welsh Ministers give a direction under subsection (4), they must—
  - (a) inform the SPC public procurement subgroup that they have given the direction, and
  - (b) publish the direction.
- (6) Where the Welsh Ministers do not give a direction under subsection (4) despite not being satisfied, they must—
  - (a) inform the SPC public procurement subgroup that they have not given a direction, and
  - (b) publish a summary of—
    - (i) their reasons for not being satisfied, and
    - (ii) their reasons for not giving a direction despite not being satisfied.
- (7) The Welsh Ministers must take any action taken under subsections (2)(a) or (b) as soon as reasonably practicable.
- (8) A contracting authority must provide any documents or other information it is required to provide under subsection (2)(b) as soon as reasonably practicable.
- (9) Nothing in this section requires the Welsh Ministers to publish information which, following consultation with the appropriate contracting authority, the Welsh Ministers consider would be exempt from disclosure were it to be subject to a request for information under the [Freedom of Information Act 2000 \(c. 36\)](#).

### **31 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 25(1)(b));
  - (b) social public works clauses are not included in the contract (despite having taken all reasonable steps in accordance with section 25(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 25(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 28(2)).

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