

Hannah Blythyn MS
Deputy Minister for Social Partnership

22 September 2022

Dear Hannah

Scrutiny of the Social Partnership and Public Procurement (Wales) Bill

Thank you for agreeing to appear before the Committee on 12 September as Member in charge of the Social Partnership and Public Procurement (Wales) Bill.

In light of the suspension of Senedd business due to the death of Her Majesty Queen Elizabeth II, we have decided against rescheduling the session, and instead seek evidence on the Bill from you in writing.

Please find a list of questions at the Annex. I would be grateful to receive your responses to them by 14 October 2022.

Yours sincerely,



Huw Irranca-Davies
Chair

Annex

General

1. Are you content that all provisions of the Bill as introduced fall within the legislative competence of the Senedd?
2. Are there any human rights issues arising from the Bill?
3. The draft Bill included a fair work duty on Welsh Ministers to set fair work objectives, to take steps to achieve these, and to annually report on progress. For what reasons have these proposals not been included in the Bill introduced into the Senedd? Have these elements of the draft Bill been removed due to the limits on the Senedd's legislative competence?
4. Can you set out why the Welsh Government has chosen to introduce legislation in relation to social partnership, fair work and socially responsible public procurement as opposed to following a non-statutory approach?
5. The Welsh Government wrote to the UK Government and other devolved administrations about this Bill as it is covered by the Public Procurement Common Framework. Did any of the other UK administrations raise concerns with you about the Bill? If so, what were their concerns and how did you respond?

Relationship with the UK Government Procurement Bill

6. The Minister for Finance and Local Government confirmed that the Welsh Government would use the UK Government's Procurement Bill to reform public procurement processes in August 2021. In a letter from the Minister for Finance and Local Government on 1 September, the Minister says:

"Incorporating the Procurement Bill into the SPPP Bill would have required changing the scope of the SPPP Bill as it would have predominantly become a Procurement Bill, shifting the focus of the Bill away from Social Partnerships. Also, the Bills are aiming to achieve different things – the Procurement Bill focuses on the processes underpinning procurement, whilst the SPPP Bill will focus on ensuring socially responsible outcomes are achieved from our procurement."

With regard to the Finance Minister's letter to us of 1 September, why would changing the scope of the Bill to include procurement processes be a problem, particularly if it mirrored what the UK Government proposed and led to more accessible bilingual legislation?

7. The Explanatory Memorandum (“EM”) states that one of the Bill’s objectives is to “improve the link between procurement processes and the delivery of outcomes through contract management.” Does this statement not suggest that there is a similarity between the Bills and that there may have been benefit to combining the two of them?
8. Did you consider a separate Welsh Government Procurement Bill, mirroring provisions in the UK Government Bill which would have enabled scrutiny by Members of the Senedd, which would sit alongside the Social Partnership and Procurement Bill?
9. The Minister’s letter of 1 September letter also referred to the need for consistency in procurement practice. The UK Bill provides the Welsh Ministers with powers to make secondary legislation. Why can consistency be achieved through separate secondary legislation being implemented in Wales and England, but not separate primary legislation?
10. Can you summarise how this Bill interacts with the UK Government legislation, and how the UK Government legislation impacted upon the development of this Bill?

Accessibility

11. One of the principles set out by the Counsel General is to aim for clear and accessible law on the statute book in Wales. If this Bill and the UK Government’s Procurement Bill are passed, procurement law that is applicable to Welsh citizens will be contained in both Senedd and UK Parliament Acts. Why has the Welsh Government not adhered to its own principles of clear and accessible legislation?
12. Section 17 of the Bill provides that the Welsh Ministers must consult with the Social Partnership Council “when making decisions of a strategic nature” about the reasonable steps to take to meet their wellbeing objectives under the Well-being of Future Generations Act 2015. In **written evidence to the Equality and Social Justice Committee**, Audit Wales considers that the phrase “decisions of a strategic nature” could be clarified on the face of the Bill, “as it does not seem entirely appropriate for the Welsh Ministers to be providing guidance to themselves on the interpretation of this phrase.” Have you considered clarifying this phrase on the face of the Bill?
13. Section 20 of the Bill amends section 4 of the Well-being of Future Generations Act 2015 by substituting ‘fair work’ for ‘decent work’ within the existing “A prosperous Wales” goal. In **written evidence to the Equality and Social Justice Committee**, Professor Alan Felstead noted that “the Explanatory Memorandum attached to the tabled Bill suggests this will mean that ‘fair work takes on its ordinary meaning’, even though the term has very specific meaning which has been accepted by Welsh Government.” Do you believe that the absence of this accepted definition within this Bill will have any impact on the

accessibility and the clarity of the requirements of the Well-being of Future Generations Act?

Powers to make subordinate legislation

14. Are you satisfied that the Bill strikes the right balance of providing detail on the face of the Bill versus giving regulation-making powers to the Welsh Ministers?
15. Section 32 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. The “social public workforce clauses” will be included as part of that code. Other sections (such as section 33) also provides that the code published under section 32 must include model contract clauses, that will underpin the aims of the Bill in ensuring socially responsible public procurement. The code of practice will therefore play a central role. With that in mind, why does the code have no scrutiny procedure attached to it, and why is there no duty to consult on the code? Will the Welsh Government publish a draft code of practice at the very least before the amending stages of the Bill in order that Members have an opportunity to scrutinise it?
16. Section 38(3) gives Welsh Ministers regulation-making powers to amend section 38(2) of the Bill to specify other matters which procurement strategies should address and to reduce the number of days specified in section 38(2)(c) (the maximum number of days within which invoiced should be paid). This is a power that can amend primary legislation (a Henry VIII power) yet only the negative scrutiny procedure is applied. Welsh Government drafting guidelines recommend that any powers to make secondary legislation that have the ability to amend primary legislation should be subject to the affirmative procedure. In light of this, why have you decided only to apply the negative scrutiny procedure in this case?
17. Section 48(1) of the Bill states that “this Act comes into force on such day as the Welsh Ministers may by order appoint”. When do you intend for the Bill to come into force, should it be passed by the Senedd?