

FAO Jenny Rathbone MS

Dear Ms Rathbone

The Social Partnership and Public Procurement (Wales) Bill

Evidence to the Equality and Social Justice Senedd Committee

Thank you for the opportunity to contribute to your work on this Bill. The stated purpose of the Social Partnership and Public Procurement (Wales) Bill, to create a framework to enhance the well-being of the people of Wales by improving public services through social partnership working, promoting fair work and socially responsible public procurement, is generally supported by CECA Wales and we are pleased to have been involved with Welsh Government officers in the early development of the Bill and through numerous consultation processes.

Whilst we have general comments and observations to make on aspects of the Bill our main focus at this stage is the Public Procurement element and, in particular, the provisions relating to contract management. We offer our views against the Bill's key provisions, as you have set out, which are:

The establishment of a Social Partnership Council :

Whilst we support the establishment of the Council our only reservation is ensuring that the specific concerns of the construction sector, which represents a significant proportion of business and social activity across Wales' communities, are adequately represented on what will be a relatively small body. Whilst we understand the need for a focused Council we trust that the legislation will allow sufficient flexibility for adequate representation as changing circumstances dictate. We would, however, be very disappointed if the construction sector was not appropriately represented on the Procurement Sub-Group.

A statutory duty on certain public bodies to seek consensus or compromise with their recognised trade unions (or where there is no recognised trade union) other representatives of their staff, when setting their well-being objectives and delivering on those objectives under section 3(2) of the WFG Act 2015 :

We have no specific comments on this element of the Bill at this stage.

A statutory duty on Welsh Ministers to consult social partners, employers and worker representatives through the Social Partnership Council when delivering on their well-being objectives under section 3(2)(b) of the WFG Act 2015 :

We have no specific comments on this element of the Bill at this stage.

Amendment of section 4 of the WFG Act 2015 by substituting 'fair work' for 'decent work' within the existing "A prosperous Wales" goal :

The principles of "fair work" or "decent work" should apply to all workers in Wales not just those in the public sector. Given that many construction contracts are let to private sector suppliers on the basis of

lowest price the Bill needs to address the potential anomaly between lowest price awards for construction contracts and ensuring decent work for those in the private sector working on those contracts. Otherwise, suppliers with lower standards could be rewarded by public bodies to the detriment of those adhering to the principles of the Act.

A statutory duty on certain public bodies to consider socially responsible public procurement when carrying out procurement, to set objectives in relation to well-being goals, and to publish a procurement strategy :

Construction businesses are very familiar with the principles of social value as set out in many Welsh Government Procurement Policy Statements and “community benefit” policies and requirements have been a feature of construction contracts for over 15 years. For a time, Wales led the way in delivering social value and there are some extremely good examples particularly where collaboration across public and private sectors delivered greater value. However, these good practices were never mandated and never became the “norm” across all public sector investments. In many cases social value requirements went no further than being prescribed as “clauses or targets” in a contract and were left to suppliers to “get on with it”, with little oversight or scrutiny by public bodies. This transactional approach rarely realises high value social outcomes. In the worst cases nothing was done and no social value would have been gained. I would estimate that at least half of public sector investment in construction projects (typically £1bn/annum) has failed to deliver social value. Since those early pioneering days performance across Wales has plateaued and, in many cases, dipped.

A statutory duty placed on all public bodies who deliver construction projects would ensure that all those involved in delivery are clear on their responsibilities and that positive socially responsible outcomes are not lost to communities across Wales.

Certain public bodies to carry out contract management duties to ensure that socially responsible outcomes are pursued through supply chains :

We have actively encouraged this part of the Bill to promote a consistency of application across the public sector and to reward those who deliver socially responsible outcomes over those who don't. The success of the Bill will depend on ensuring robust contract management duties.

Historically, private sector suppliers have experienced an almost complete non-existence of post-contract scrutiny of socially responsible outcomes. Unless public bodies are willing to monitor and enforce their own contractual requirements (agreed and signed off when contracts are awarded to successful suppliers) suppliers lose confidence in the importance of these requirements and are less likely to deliver them. This, in turn, can lead to an uneven playing field for suppliers as those who seek to deliver socially responsible outcomes, which do come at a cost which needs to be priced in to any tender bid, are commercially disadvantaged when compared to those who don't price these outcomes into tender bids at the outset, and are not held accountable throughout the contract.

However, the Bill needs to discourage public bodies from pursuing a highly transactional approach to delivering socially responsible outcomes through supply chains during the procurement and contract management stages. Setting poorly developed and unrealistic contractual targets in contract documents at the point of commissioning and expecting private sector suppliers to deliver will not help. We would advocate a much stronger partnership between public and private sector so that public bodies actively support private and third sector suppliers to deliver socially responsible outcomes eg establishing shared apprenticeship schemes, engaging with schools and colleges well in advance of any contract awards to establish relationships whereby suppliers can effectively support the new Welsh curriculum. Whether

this needs to be articulated in the Bill or in any supporting documentation/guidance needs to be considered.

We would also like public bodies, through this legislation, to publish forward programmes of work so that all suppliers have visibility of future workload over a minimum 12 month horizon. This will allow them to plan for business opportunities, plan to deliver socially responsible outcomes via their work and put in place proposals for longer term sustainable delivery of these outcomes. These programmes would also give visibility to public bodies to identify opportunities for greater collaboration on social outcomes across the public sector. However, to be meaningful and to help smaller suppliers, the value threshold for published projects needs to be sufficiently low (suggested £10k) and supported by basic data on delivery times, to be of relevance. This would open up the delivery of socially responsible outcomes to a much broader range of businesses.

Reporting duties to be imposed on the public bodies and Welsh Ministers in relation to the Social Partnership Duty and Procurement duty :

We believe that this is hugely important and follows on from the previous points around contract management. A regular frustration from suppliers seeking to deliver socially responsible outcomes is the lack of monitoring, reporting and enforcement of performance. If this is not undertaken by public bodies, and at a level appropriate to each specific contract or programme of work, then it will be impossible to determine if socially responsible outcomes have been delivered, the value of those outcomes and the performance of those delivering the outcomes. If the Bill is to deliver positively then those suppliers delivering the greatest social outcomes should be rewarded with further work opportunities and/or acknowledgement of their high performance.

Potential barriers to the implementation of the Bill's provisions and whether the Bill takes account of them :

The greatest barrier, in my opinion, to delivering on the purpose of the Bill in relation to public procurement and socially responsible outcomes is cultural resistance and a reluctance to consider "value" beyond lowest price. This is not new but, regardless of any new legislation, will require a concerted effort to change behaviours across all sectors. Part of this need for change relates to the "transactional" nature of how many in the public sector deal with private sector suppliers on a "we'll tell you what to do, give us the lowest price then go and do it", versus a more collaborative approach where both public and private sector work together to deliver better outcomes using their complementary skills and strengths. Otherwise, we risk perpetuating the illusion of delivering socially responsible outcomes versus a very different reality on the ground.

I hope that these views and observations are helpful to you as a Committee and I look forward to meeting you to discuss these matters further.

Yours sincerely,



Ed Evans
Director, CECA Wales/Cymru