



## Social Partnership and Procurement Bill Response to Consultation

### Globally Responsible Procurement

1. This submission is in addition to our previous submission to the Committee dated 17 June 2022 and contains specific recommendations based on the principles outlined there, and discussed with the Committee Chair on 13<sup>th</sup> July 2022. This is a flagship piece of legislation and as such all additional duties for public bodies should align with the Well-being of Future Generations Act, and key recommendations from the Gender Equality Review and the Anti-Racist Wales Action Plan. These must not be left to secondary legislation or policy statements.
2. Our Future Generations Act places a duty on all public bodies to consider the seven goals in any action as they deliver sustainable development, including thinking about impact beyond our borders. This draft bill omits any explicit regard to these responsibilities to future generations and global sustainability, and therefore risks undermining the intentions of the Act. Wales prides itself on being the world's first Fair Trade Nation and has committed, at COP26, to becoming a deforestation free nation. If fair and ethical practices are not considered throughout the supply chain during procurement, these commitments will remain unmet, and will mean Wales will continue to contribute to social and environmental harms, such as the deforestation and exploitation of workers caused by Welsh imports of cocoa, beef and soy, (see *Shea et al 2021* as an example) and would fall short on the ambitions of the Anti-Racist Wales action plan due to the disproportionate impact of harms upon ethically and racially diverse communities
3. **Recommendation 1:** We are deeply concerned at the current wording of **Clause 24(1)** in the Bill which states that “a contracting authority must seek to improve the economic, social, environmental and cultural well-being *of its area* by carrying out public procurement in a socially responsible way” (our emphasis). The apparent limiting of the scope of well-being goals to the area of a local authority runs directly contrary to the Well-Being Goals of a “globally responsible Wales” and to the definition of a “Prosperous Wales” in the WBFGA 2015, which refers explicitly to the impact of prosperity on “the limits of the global environment.” As this Bill will be passed into law after the WBFGA 2015, there is a danger that the definition of well-being as referring only to “the local area” may come to supersede the much fuller definition in the WBFGA 2015. We would urge that the wording of the Bill should cross-refer to the duties imposed by the WBFGA 2015.

### Ethical and sustainable certifications

4. Ethical and sustainable certifications can be used to deliver global responsibility. There are many established certifications to support ethical and sustainable purchasing on the global market (Fairtrade, FSC, MSC, Electronics Watch, Organic, etc) and can be used without fear of litigation within procurement processes to protect public bodies from the worst human and environmental abuses within the supply chain. This is particularly important given Wales' status as a Fair Trade nation. Such ethical and sustainability benefits need to be clearly articulated within tendering documents and form part of contract management. Recording data on these purchasing commitments will provide a clear route to evidence our positive impacts also.
5. **Recommendation 2:** Sensitisation and staff training effort is needed plus a macro analysis to support procurement officers understanding of how public body activities and consumption can have both negative and positive global impacts. Currently, procurers' do not have the confidence, needed to tender, score and award contracts transparently using sustainable criteria. Implementation of this Social Partnership and Procurement (Wales) Bill will require investing in leadership, guidance and appropriate resources.

### Carbon Emission Targets

6. **Recommendation 3:** Net Zero targets should be inserted on the face of the Bill. This would enable the Bill to meet the recommendation in the Future Generations Commissioner for Wales report "Procuring well-being in Wales" that "to meet carbon emission targets every public body should set out clearly how they have considered the carbon impact of their procurement decisions and in the case of construction or infrastructure contracts should clearly require schemes to be net-zero carbon over their lifetime".
7. **Recommendation 4:** Commitments made at COP26 by the Welsh Government to tackle Wales' Overseas Deforestation starting with public procurement<sup>1</sup>, should be referenced on the face of the Bill.

### Engagement

8. **Recommendation 5:** The current bill makes no reference to the five ways of working outlined in the WBFGA 2015. Rather it includes a much narrower understanding of 'consultation' in **clause 16(2)**, which appears to limit the nature both of the consultation and limits the consultees to trades unions and employees, where women and ethnically diverse communities are typically under-represented. Clause 16(2) should be replaced by a cross-reference to, or quotation from, the five ways of working in Clause 5(2) of the WBFGA 2015.
9. **Recommendation 6:** The Social Partnership Council members need an understanding of globally responsible procurement to enable them to demonstrate leadership and knowledge for public procurers across Wales.

### A statutory duty on certain public bodies to seek consensus or compromise with their recognised trade unions/other representatives of staff when setting and delivering on their wellbeing objectives

10. We are concerned at the use of the word "compromise" in **clause 16 (1) and (2)**. While the notion of "compromise" with regard to workers' terms and conditions and other aspects of employment law is well understood, the Bill places that word in the context of sustainable

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<sup>1</sup> <https://www.bbc.co.uk/news/uk-wales-59199514>

development. Clause 16(1) explicitly talks about reaching compromise with trades unions or other workers' representatives with regard to (a) the well-being objectives [of the public authority]; and (b) decisions of a strategic nature to be made about the reasonable steps the body takes ... to meet those objectives under section 3(2)(b) of the WBFGA 2015. The notion that public bodies and trade unions should, by law, be required to compromise on the well-being of future generations and on the statutory well-being goals seems to undermine a central feature of the WBFGA. That there may be some trade-offs between particular well-being goals and discussion around the wording of particular well-being objectives is understandable; but to compromise on these goals with one particular interest group threatens the holistic nature of the WBFGA.

11. **Recommendation 7:** Replace the word "compromise" with "consult" and make reference to the five ways of working outlined in the WBFGA 2015.

### **Wales risks being left behind**

12. With an annual procurement spend of £6.3 billion, the Welsh public sector has a huge role to play in helping to drive responsible consumption and production. Ignoring these issues now, would mean that Wales risks being left behind as other nations are actively bringing legislation on this topic. France has policy on deforestation free procurement, California has a bill being considered by their Assembly and the United States are also drawing up legislation. Public procurement is a global issue, and this should not be omitted from this Bill.

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