



Social Partnership and Public Procurement (Wales) Act 2023

2023 asc 1

PART 3

SOCIALLY RESPONSIBLE PUBLIC PROCUREMENT

PROSPECTIVE

CHAPTER 2

SOCIALLY RESPONSIBLE PROCUREMENT DUTY

The socially responsible procurement duty

24 Socially responsible procurement duty

- (1) 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.
- (2) A contracting authority carries out public procurement in a socially responsible way by taking action, in accordance with the sustainable development principle, aimed at contributing to the achievement of the well-being goals listed in section 4 of the WFGA 2015 (referred to for the purposes of this Part as the “well-being goals”).
- (3) A contracting authority must set and publish objectives (“socially responsible procurement objectives”) designed to maximise its contribution to achieving the well-being goals.
- (4) Schedule 2 makes provision about revising and reviewing socially responsible procurement objectives.

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Changes to legislation: There are currently no known outstanding effects for the Social Partnership and Public Procurement (Wales) Act 2023, CHAPTER 2. (See end of Document for details)

- (5) In taking action aimed at contributing to the achievement of the well-being goals, a contracting authority must—
- (a) take all reasonable steps to meet its socially responsible procurement objectives when it carries out public procurement in relation to any prescribed contract;
 - (b) take the particular actions referred to in section 25 when it carries out public procurement in relation to a major construction contract;
 - (c) take the particular actions referred to in section 26 when it carries out public procurement in relation to an outsourcing services contract.
- (6) Despite subsection (1), a contracting authority must not include provisions in a prescribed contract that—
- (a) are not proportionate (taking into account the estimated value of the contract);
 - (b) would conflict with any other enactment or rule of law relating to public procurement.
- (7) For the purposes of subsection (2), “the sustainable development principle” has the meaning given by section 5 of the WFGA 2015.
- (8) In this Part, a “prescribed contract” means—
- (a) a major construction contract (see section 25),
 - (b) an outsourcing services contract (see section 26), and
 - (c) any other public contract of a description prescribed by the Welsh Ministers by regulations.

Commencement Information

II S. 24 not in force at Royal Assent, see **s. 48(1)**

25 Socially responsible procurement duty: major construction contracts

- (1) The particular actions mentioned in section 24(5)(b) are—
- (a) having regard to model social public works clauses published by the Welsh Ministers under section 27;
 - (b) in designing and carrying out procedures preceding the award of the major construction contract, considering whether the contract should include social public works clauses;
 - (c) in negotiating and awarding the contract, taking all reasonable steps—
 - (i) to include any social public works clauses it considers should be included;
 - (ii) to ensure that clauses included in the contract can be implemented;
 - (d) in managing the contract, taking all reasonable steps to ensure that any social public works clauses included in the contract are implemented;
- (see sections 27 to 31 for further provision about the meaning of “social public works clauses” and their application to major construction contracts).
- (2) In this Part, a “major construction contract” is a public contract with an estimated value equal to or greater than £2,000,000, which is—
- (a) a public works contract,
 - (b) a works contract, or

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(c) a works concession contract.

(3) The Welsh Ministers may by regulations amend this section to modify the meaning of a major construction contract.

Commencement Information

I2 S. 25 not in force at Royal Assent, see s. 48(1)

26 Socially responsible procurement duty: outsourcing services contracts

(1) The particular actions mentioned in section 24(5)(c) are—

- (a) having regard to the public services outsourcing and workforce code published by the Welsh Ministers under section 32;
- (b) in designing and carrying out procedures preceding the award of the outsourcing services contract, considering whether the contract should include social public workforce clauses;
- (c) in negotiating and awarding the contract, taking all reasonable steps—
 - (i) to include any social public workforce clauses it considers should be included;
 - (ii) to ensure that clauses included in the contract can be implemented;
- (d) in managing the contract, taking all reasonable steps to ensure that any social public workforce clauses included in the contract are implemented;

(see sections 32 to 37 for further provision about the public services outsourcing and workforce code, the meaning of “social public workforce clauses” and their application to outsourcing services contracts).

(2) In this Part, “an outsourcing services contract” means a contract under which—

- (a) a requirement to provide a public service provided by, or previously provided by, a contracting authority is transferred to another person, or
- (b) another person agrees to undertake any other function undertaken by, or previously undertaken by, a contracting authority;

and “outsourced” is to be construed accordingly.

Commencement Information

I3 S. 26 not in force at Royal Assent, see s. 48(1)

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—

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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 or belief, sex, gender identity or sexual orientation).
Compliance	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.

Commencement Information

I4 S. 27 not in force at Royal Assent, see [s. 48\(1\)](#)

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)).

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- (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);
 - (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.

Commencement Information

I5 S. 28 not in force at Royal Assent, see [s. 48\(1\)](#)

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.

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Commencement Information

I6 S. 29 not in force at Royal Assent, see [s. 48\(1\)](#)

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.
- (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.

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- (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 \(c. 36\)](#).

Commencement Information

I7 S. 30 not in force at Royal Assent, see [s. 48\(1\)](#)

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

Commencement Information

I8 S. 31 not in force at Royal Assent, see [s. 48\(1\)](#)

Social public workforce clauses and code of practice on outsourcing public services

32 Public services outsourcing and workforce code

- (1) For the purposes of maintaining or improving the quality of public services or other functions outsourced by contracting authorities, the Welsh Ministers must prepare and publish a code of practice (the “public services outsourcing and workforce code”) about employment and pensions matters related to outsourcing services contracts.
- (2) The Welsh Ministers may revise the code and must publish the revised code.
- (3) In preparing the code or any revision the Welsh Ministers must consult such other persons as they consider appropriate.
- (4) The Welsh Ministers must lay a copy of the code and any revision before the Senedd.

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Commencement Information

I9 S. 32 not in force at Royal Assent, see [s. 48\(1\)](#)

33 Social public workforce clauses in outsourcing services contracts

The public services outsourcing and workforce code must include model contract clauses (“social public workforce clauses”), which in particular—

- (a) are designed to ensure that members of staff employed by contracting authorities in providing services, or undertaking functions, to be outsourced will, if they wish, become employed by the person providing those services, or undertaking those functions, when they are outsourced (“transferring staff”);
- (b) are designed to protect the terms and conditions and pensions arrangements of transferring staff;
- (c) are designed to ensure that the terms and conditions of other members of staff employed by the person providing the services, or undertaking the functions, who are involved in providing those services, or undertaking those functions, are no less favourable overall than those of transferring staff, and that the pensions arrangements of those other members of staff are reasonable;
- (d) make provision supplementary to the matters referred to in paragraphs (a) to (c).

Commencement Information

I10 S. 33 not in force at Royal Assent, see [s. 48\(1\)](#)

34 Social public workforce clauses in subcontracts

- (1) Subsection (2) applies if a contracting authority intends to include social public workforce clauses in an outsourcing services contract it agrees with an economic operator (a “contractor”) (the authority having considered whether to do so in accordance with section 26(1)(b)).
- (2) The authority must take all reasonable steps to ensure that the obligations in the social public workforce 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 workforce clauses having the same or substantially the same effect as those in the outsourcing services contract are included in any subcontract—
 - (i) the contractor enters into with a subcontractor, and
 - (ii) the subcontractor enters into with a subsequent contractor (and so on);
 - (b) ensuring that the contracting authority may enforce the obligations in social public workforce clauses under the outsourcing services 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 workforce clauses having the same or substantially the same effect

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- as those included in the outsourcing services 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 workforce clauses having the same or substantially the same effect as those included in the outsourcing services contract;
 - (e) requiring the contractor to monitor the extent any obligations in social public workforce clauses are implemented where the contractor has entered into a subcontract with any other economic operator.

Commencement Information

I11 S. 34 not in force at Royal Assent, see [s. 48\(1\)](#)

35 Social public workforce clauses: notifying the Welsh Ministers

- (1) A contracting authority must notify the Welsh Ministers if, in relation to an outsourcing services contract—
 - (a) the authority does not intend to include social public workforce clauses in the contract (despite having considered whether to do so in accordance with section 26(1)(b));
 - (b) social public workforce clauses are not included in the contract (despite the authority having taken all reasonable steps in accordance with section 26(1)(c)(i));
 - (c) there is no process in place for ensuring that obligations in social public workforce clauses are implemented (despite the authority having taken all reasonable steps in accordance with section 26(1)(c)(ii));
 - (d) there is no process in place for ensuring that obligations in social public workforce clauses are implemented where the contract is subcontracted (despite the authority having taken all reasonable steps in accordance with section 34(2)).
- (2) A notification under subsection (1) must be made as soon as reasonably practicable and must give the authority's reasons.

Commencement Information

I12 S. 35 not in force at Royal Assent, see [s. 48\(1\)](#)

36 Social public workforce clauses: Welsh Ministers' response

- (1) Where the Welsh Ministers receive a notification under section 35(1), they must—
 - (a) publish a summary of the notification, and
 - (b) consider whether they are satisfied with the reasons given in the notification.
- (2) In considering whether they are satisfied with the reasons, the Welsh Ministers may—
 - (a) consult the contracting 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;

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- (c) provide the SPC procurement subgroup with a copy of the notification under section 35(1) and any documents or other information received under paragraph (b);
 - (d) consult the SPC procurement subgroup.
- (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 workforce clauses in the outsourcing services contract,
 - (b) put processes in place for ensuring that obligations in social public workforce clauses are implemented, or
 - (c) put processes in place for ensuring that obligations in social public workforce 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 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 \(c. 36\)](#).

Commencement Information

I13 S. 36 not in force at Royal Assent, see [s. 48\(1\)](#)

37 Social public workforce clauses: Welsh Ministers' contracts

- (1) The Welsh Ministers must publish a statement if, in relation to an outsourcing services contract—
- (a) they do not intend to include social public workforce clauses in the contract (despite having considered whether to do so in accordance with section 26(1)(b));
 - (b) social public workforce clauses are not included in the contract (despite having taken all reasonable steps in accordance with section 26(1)(c)(i));

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- (c) there is no process in place for ensuring that obligations in social public workforce clauses are implemented (despite having taken all reasonable steps in accordance with section 26(1)(c)(ii));
 - (d) there is no process in place for ensuring that obligations in social public workforce clauses are implemented where the contract is subcontracted (despite having taken all reasonable steps in accordance with section 34(2)).
- (2) A statement under subsection (1) must be made as soon as reasonably practicable and give the Welsh Ministers' reasons.

Commencement Information

I14 S. 37 not in force at Royal Assent, see [s. 48\(1\)](#)

Procurement strategies

38 Procurement strategy

- (1) A contracting authority must prepare a strategy (a “procurement strategy”) setting out how the authority intends to carry out public procurement.
- (2) A procurement strategy must, in particular—
- (a) state how the authority intends to ensure that it will carry out public procurement in a socially responsible way in accordance with section 24(1);
 - (b) state how the authority intends to take all reasonable steps to meet its socially responsible procurement objectives when it carries out public procurement in relation to any prescribed contract;
 - (c) state how the authority intends to make payments due under a contract promptly and, unless this is not reasonably practicable, no later than 30 days after an invoice (or similar claim) is submitted.
- (3) The Welsh Ministers may by regulations amend subsection (2)—
- (a) to specify other matters which procurement strategies must address;
 - (b) to reduce the number of days mentioned in subsection (2)(c).
- (4) A contracting authority must—
- (a) review its procurement strategy each financial year,
 - (b) make any revisions that the authority considers appropriate from time to time, and
 - (c) publish the strategy, and any revision, as soon as reasonably practicable after it has been prepared or revised.
- (5) Two or more contracting authorities may fulfil their obligations under this section by preparing a joint procurement strategy.

Commencement Information

I15 S. 38 not in force at Royal Assent, see [s. 48\(1\)](#)

Status:

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Changes to legislation:

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