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Social Partnership and Public Procurement (Wales) Act 2023

19th March 2025

Sue Hurrell, Welsh Government

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Introduction

- Overview of the Act
- An Act of Senedd Cymru to make provision about sustainable development in accordance with a principle of social partnership; about socially responsible public procurement; establishing a Social Partnership Council for Wales; and for connected purposes

Social Partnership and Public Procurement (Wales) Act 2023

Part 1 – Establishment of Social Partnership Council

Part 2 – Social Partnership and Sustainable Development

Part 3 – Socially Responsible Public Procurement

Part 4 – Final Provisions

Links with other legislation

- Well-being of Future Generations (Wales) Act 2015
- Procurement Act 2023
- Government of Wales Act 2006



Llywodraeth Cymru
Welsh Government

Caffael Cymdeithasol Gyfrifol

Socially Responsible Procurement

Sue Hurrell



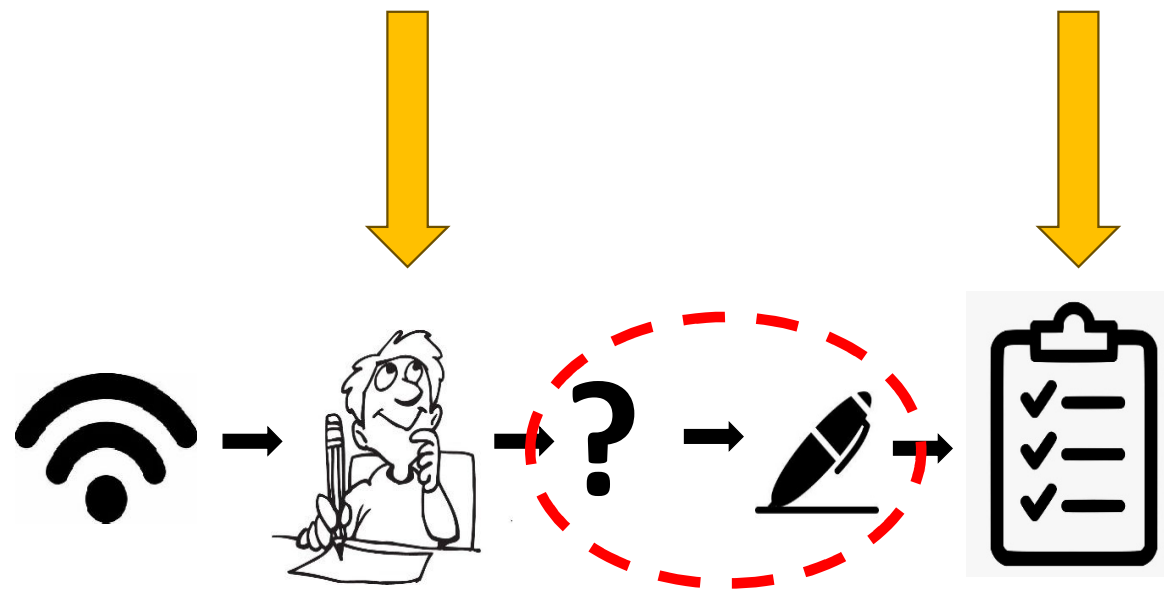
Y Ddeddf The Act





Pŵer Caffael

The Power of Procurement





Y ddyletswyddau caffael

The procurement duties

Beth?

- Nodau lles.
- Lles cymdeithasol, amgylcheddol, economaidd a diwylliannol

Ar bwy?

- Rhai o'r Awdurdodau Datganoledig Cymreig...gyda'r potensial i fynd yn ehangach.

Sut bydd hon yn gweithio gyda diwygiant o'r broses caffael ar draws y DU?

- Ffocws ar polisi/canlyniad

What?

- well-being goals.
- Social, environmental, economic and cultural well-being

Who?

- Some of the devolved Welsh Authorities... with scope to widen.

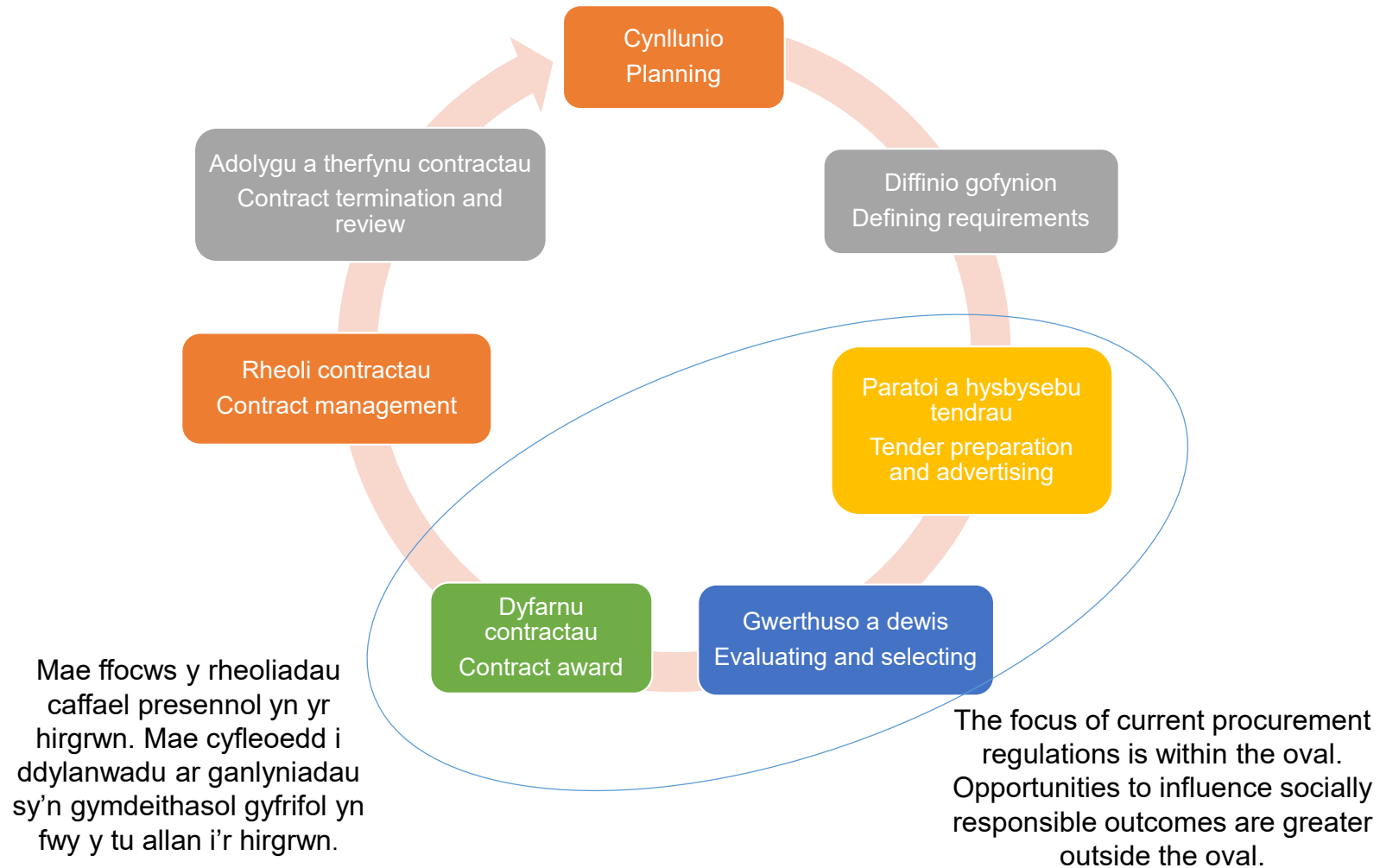
How will this fit with reform of the procurement process across UK?

- Focus on policy/outcome



Y ddyletswyddau caffael

The procurement duties





Y ddyletswydd caffael trosfwaol

The over-arching procurement duty

“Dyletswydd Caffael Cymdeithasol Gyfrifol”

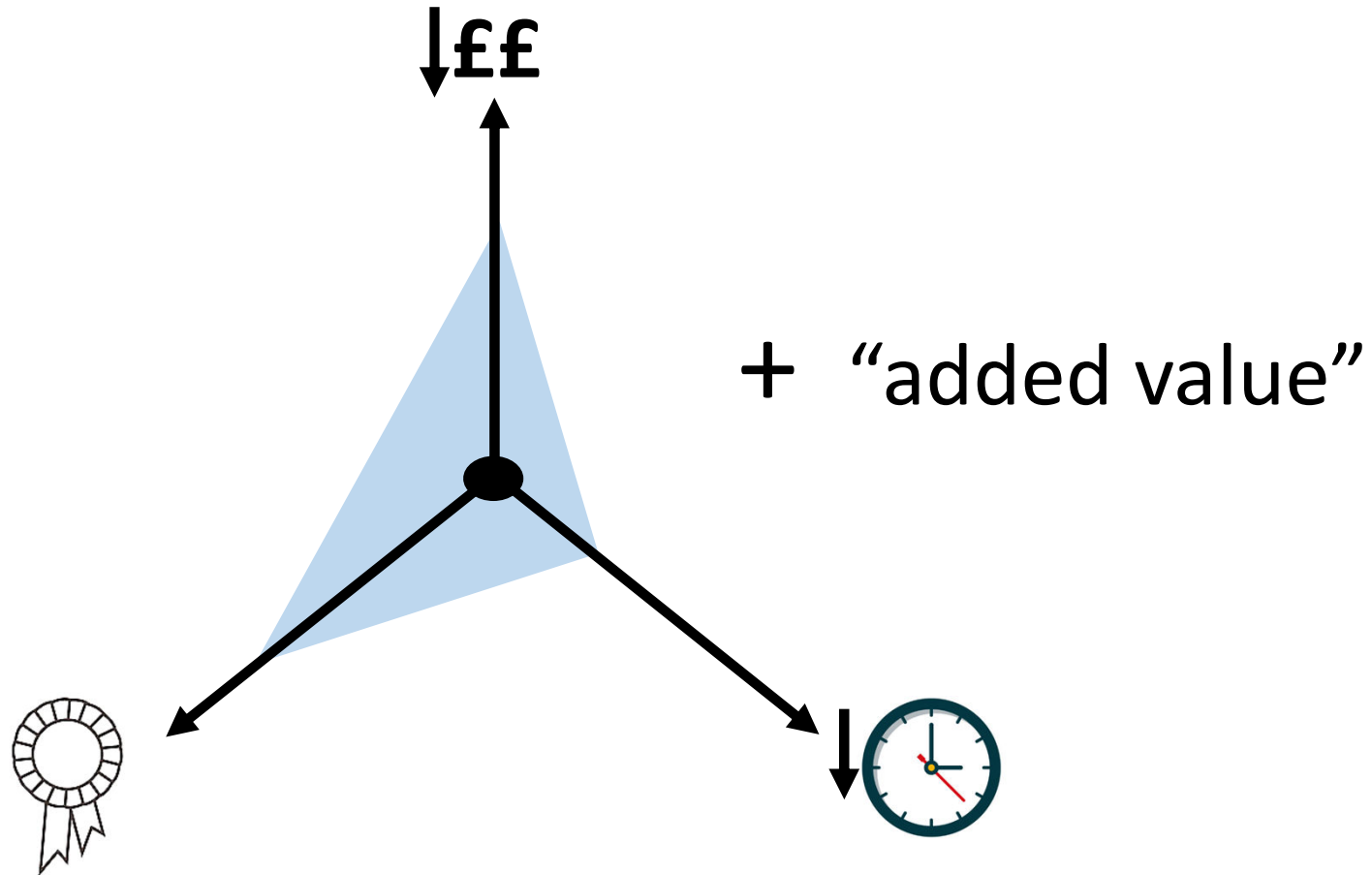
- Dyletswydd ochr i ochr hollgyffredinol ar sefydliadau
- .. wrth *gynllunio, drafftio, trafod, dyfarnu a rheoli* contract..
- Anelu at wella llesiant cymdeithasol, economaidd ac amgylcheddol, drwy
- Sefydlu a chyhoeddi amcanion.

“Socially Responsible Procurement Duty”

- End-to-end, overarching duty on organisations
- .. in *designing, drafting, negotiating, awarding* and *managing* a contract..
- to seek to improve economic, social, environment and cultural well-being, by
- Setting and publishing objectives for all procurement

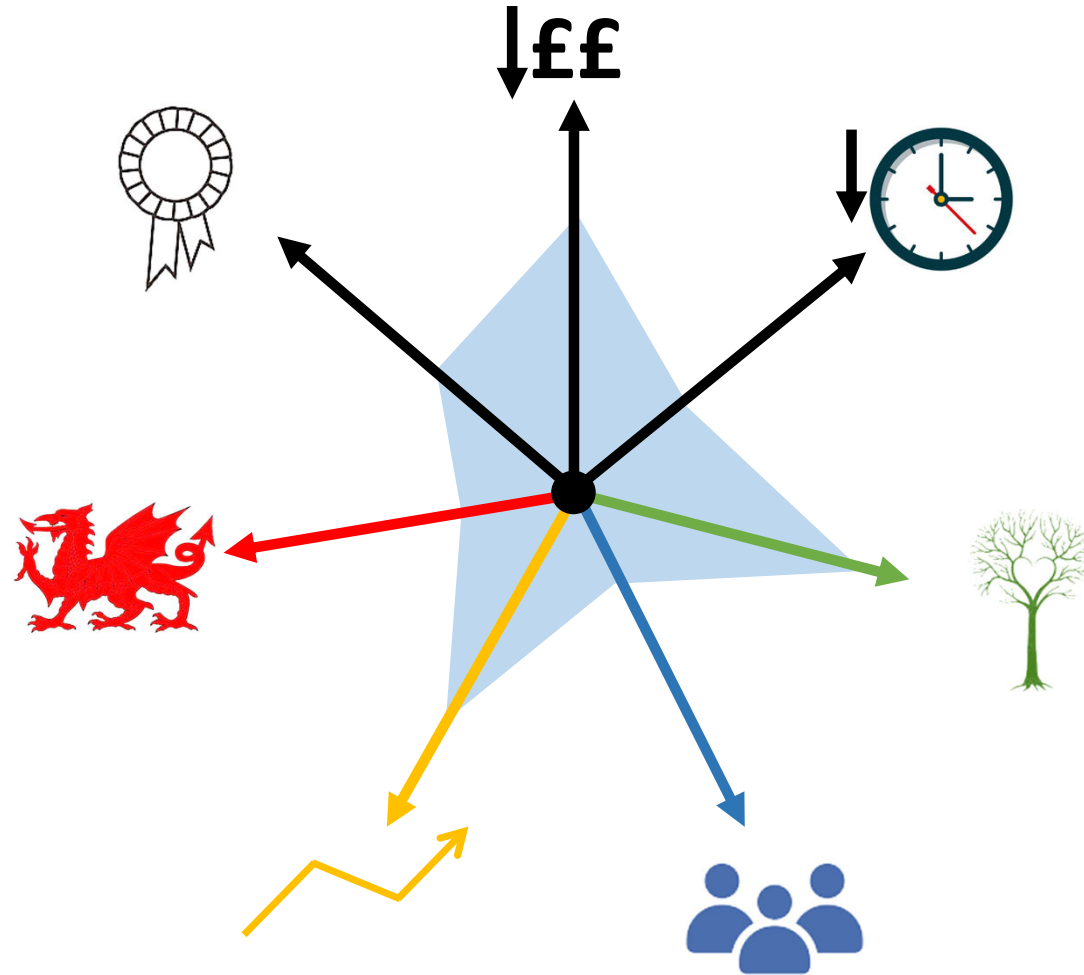


Optimeiddio – yn flaenorol Optimisation - previously





Optimeiddio – nawr Optimisation - now





“Camau penodol” “Particular actions”

Ar gyfer contractau adeiladu mawr (1) a gwasanaethau allanoli (2) uwchben:

1. Cymalau gwaith cyhoeddus cymdeithasol
2. Cymalau gweithlu cyhoeddus cymdeithasol

Tri cam sydd eu hangen:

1. Cynnwys mewn contractau
2. Cynnwys trwy cadwyni cyflenwi
3. Rhoi proses ar waith i sicrhau bod y rhain yn cael eu gweithredu

Rhoi gwybod i Lywodraeth Cymru os NI FYDD y rhain yn cael eu chynnwys.

Gall arwain at gyfarwyddyd gweinidogol, neu adroddiad cyhoeddedig.

For major construction (1) and outsourcing services (2) above:

1. Social public works clauses
2. Social public workforce clauses

Three steps needed:

1. Include in contracts
2. Include throughout supply chains
3. Put a process in place to ensure these are implemented

Notify Welsh Government if they are NOT included.

May result in ministerial direction, or a published report.



Cymalau contract

Contract clauses

Cymalau gwaith cyhoeddus
cymdeithasol:

- Taliad prydlon
- Cyfleoedd cyflogaeth
- Cydymffurfiaeth â rheoliadau cyflogaeth
- Hyfforddiant
- Cyfleoedd i fusnesau bach a chanolig
- Rheoliad amgylcheddol

Social public workforce clauses:

- Staff yn trosglwyddo ar delerau cyflogaeth cyfartal
- Asiedydd newydd ar delerau cyflogaeth cymesur
- Rhwymedigaeth monitro

Social public works clauses:

- Prompt payment
- Employment opportunities
- Compliance with employment regulations
- Training
- Opportunities for SMEs
- Environmental management

Social public workforce clauses:

- Staff transfer on equal employment terms
- New joiners on commensurate employment terms
- Monitoring obligation



Strategaethau ac adroddiadau Strategies and reports

- Cyhoeddi Strategaeth Caffael
 - Adroddiad blynyddol
 - Crynodeb o “gontractau a ragnodir” – canlyniadau ac ardaloedd lle mae angen gwella.
 - Adroddiad cryno gan Lywodraeth Cymru
- Publish a Procurement Strategy
 - Annual report
 - Summary of “prescribed contracts” – outcomes and areas where improvements are needed.
 - Welsh Government summary report



Arolygiaeth, ymchwiliadau ac adborth Oversight, investigations and feedback

- Pwerau ymchwilio i Weinidogion Cymru
 - Cyngor Y Bartneriaeth
Gymdeithasol – her ac adborth i Weinidogion
 - Yr is-grŵp statudol ar gaffael
 - (anstatudol) Gwasanaeth Adborth
 - caffael a rheoli contractau
 - Ymestyn y rhain sy'n gallu codi cwestiynau
- Investigatory powers to Welsh Ministers
 - Social Partnership Council - challenge and advice to Ministers
 - Statutory procurement subgroup
 - (non-statutory) Feedback Service
 - procurement and contract management
 - Extending organisations that can raise questions



Amserlen Timescale

- Cyhoeddi Strategaeth Caffael
 - Adroddiad blynyddol
 - Crynodeb o “gontractau a ragnodir” – canlyniadau ac ardaloedd lle mae angen gwella.
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Crynodeb In summary

- Cychwynnwyd adrannau ar gyfer ymgynghori – diwedd Mawrth
 - Ymgynghoriad ar Gôd a chymalau'r Gweithlu – gwanwyn?
 - Ymgynghoriad ar Gymalau Gwaith – haf?
 - Dyletswydd i sefydlu is-grŵp – haf
 - Rheoliadau – parhaus
 - Canllawiau – parhaus
 - Dyletswyddau ar gyrff Atodlen 1 sy'n dod i rym erbyn dechrau 2026.
 - Blwyddyn ariannol gyntaf y Ddeddf fydd 2026/27
 - Adroddiadau blynyddol cyntaf a ddisgwylir ar ôl mis Ebrill 2027
- Sections commenced for consultation – end March
 - Consultation on Workforce Code and clauses – spring?
 - Consultation on Works Clauses and guidance – summer?
 - Duty to establish sub-group – summer
 - Regulations - ongoing
 - Guidance - ongoing
 - Duties on Schedule 1 bodies coming into force by early 2026
 - First FY of Act in force is 2026/27
 - First annual reports due after April 2027

Payment

Model clauses and guidance will be published by Welsh Ministers in relation to:

- Promptness in assessing and making payments
- Ring-fencing of project funds
- Transparency of supply chain payments

in order to protect payment to supply chains

What to Do - Prompt Payment

- Include provisions in contracts requiring:
 - payment within 30 days of application to:
 - main contractors; and
 - subcontractors
 - consent to subcontracting to be withheld if the above not complied with
 - The use of a project bank account

Monitoring – Prompt Payment

- Project bank accounts:
 - Contracting Authority to sign off on payments from the account where it is an account holder; or
 - where the Contracting Authority is not an account holder require access to evidence of account transactions
- Key Performance Indicators:
 - Require evidence of payments to supply chain; and/or
 - Provide the ability for the Contracting Authority to access and audit contractor information relating to payment

Consequences – Prompt Payment

Include in the contract the consequences of failing to comply with prompt payment provisions e.g.

- the ability to terminate if the failure is not rectified within a certain period;
- withholding payment due to the Contractor while the failure remains unrectified (whilst still paying sums due to subcontractors);
- The ability to exclude a contractor from bidding for future work for a defined certain

Consequences will need to be proportionate

Project Bank Accounts

- Mandatory for Major Construction Contracts unless the contractor can satisfy the Contracting Authority that its payment processes are as good as or better than a PBA
- All subcontractors to join PBA unless exemption provisions are met or with Contracting Authority consent
- Applications for payment to include breakdowns for all PBA subcontractors

Retentions

Cash Retentions

- Ring-fenced bank accounts administered by the Contracting Authority
- All subcontractors from whom a retention is being held to sign up
- Multiple release provisions so that sums are released to subcontractors on completion of subcontract works

Retention Bond

- To be used where retention cannot be ring-fenced. Contracting Authority will be expected to pay bond premium

Employment

- Contractual obligation to adopt inclusive recruitment and employment practices
 - Employment Plan
 - Provision of data
- Optional clauses
 - Ethical Code (Code of Practice - Ethical Employment in Supply Chains issued by the Welsh Government on 31 May 2017) and any similar applicable schemes
 - Disability Confident Scheme, Diversity Champions and Race, Business in the Community
 - Guide to Fair Work

Compliance

- Improvement in compliance with legal obligations in relation to employment rights
- Contractual obligation to ensure they are informed and comply with legal obligations
 - Request accurate and complete information to ensure compliance
- Contractual obligation to put in place a confidential mechanism for reporting
- Optional clauses
 - Modern Slavery, Human Rights and Offshore Labour Standards

Training

- Provision of appropriate training for workers
- Training Plan
 - Comprehensive and relevant training
- Provision of information
 - Training Plan
 - Details of qualifications obtained, apprenticeships and H&S training provided

Sub-contracting

- Promoting opportunities for small and medium-sized enterprises, micro enterprises and voluntary organisations

Environment

- Resilience to climate change
- Enhancing natural environment and biodiversity
- Minimising whole life carbon emissions
- Reducing global ecological footprint

Public Services Outsourcing and Workforce Code and Social Public Workforce Clauses

- Section 32 of the Social Partnership and Public Procurement Wales Act 2023
- Contracting Authorities must have regard to the Code and should included the Clauses in any Outsourcing Service Contract
- Contracting Authorities that are subject to the Code are set out in Schedule 1 of the Act

Public Services Outsourcing and Workforce Code and Social Public Workforce Clauses

- Code sets out principles which should be applied in relation to:
 - Outsourcing of public services to private or third sector
 - Second and subsequent generation outsourcing
 - Services are insourced
- Set of principles and clauses which protect
 - Employment terms and conditions of transferring staff
 - Pension of transferring staff
 - Terms and conditions of other staff who work alongside transferring staff in providing the services that have been outsourced
- Contract management

Public Services Outsourcing and Workforce Code and Social Public Workforce Clauses

- Trade Union consultation and recognition
- Notification requirements to Welsh Ministers
 - the Contracting Authority does not intend to include Social Public Workforce Clauses in the contract;
 - Social Public Workforce Clauses are not included in the Outsourcing Services Contract;
 - There is no process in place for ensuring that obligations in Social Public Workforce Clauses are implemented;
 - there is no process in place for ensuring that obligations in Social Public Workforce Clauses are implemented where the contract is subcontracted

Questions

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Thank You

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