PROCUREMENT GUIDANCE NOTES

Northern Ireland Public Procurement Policy (NIPPP) was approved by the Northern Ireland Executive in 2002. In approving the policy, the Executive took the decision that legislation was not necessary to ensure that Departments, their Agencies, Non-Departmental Public Bodies and Public Corporations complied with the policy. Instead, it considered that compliance could be achieved by means of administrative direction.

Procurement Guidance Notes (PGNs) are the administrative means by which Departments are advised of procurement policy and best practice developments. They apply to those bodies subject to NIPPP and also provide useful guidance for other public sector bodies.

PGNs are developed by the Construction and Procurement Delivery (CPD), in consultation with the Centres of Procurement Expertise (CoPEs), and are subject to the approval of the Procurement Board.

Once endorsed by the Procurement Board, they are issued to the Departments for implementation and copied to CoPEs to develop, if necessary, underpinning procedures supporting the implementation of this guidance in their particular sector. PGNs are also published on the Department of Finance (DoF) website.

The following PGN was endorsed by the Procurement Board with effect from 19 December 2018 for use by those bodies subject to NIPPP. This PGN is not applicable to Northern Ireland Water.

Revision History

First issued 19 December 2018
## Definition of Terminology

In the preparation of this guide, the term **contractor/supplier** has been used to denote an organisation that contracts directly with a Department, whether it is a supplier, a service provider or a construction contractor.

The term **Department** has been used to refer to those bodies subject to Northern Ireland Public Procurement Policy including Departments, Non-Departmental Public Bodies and Public Corporations. A full list of such bodies is available in Annex A of the [Northern Ireland Public Procurement Policy (NIPPP)](https://www.gov.uk/government/publications/northern-ireland-public-procurement-policy).
1 BACKGROUND

1.1 Northern Ireland Departments and their arm’s length bodies spend some £2.7 billion per annum on the procurement of goods, services and works. Decisions made in public procurement processes can have consequences on the enjoyment of human rights of persons living within Northern Ireland, the UK, Ireland, and further overseas. This could arise in situations where:

- service users’ human rights and dignity may not be respected by private or third-sector providers of essential public services delivered on behalf of central or local public authorities, eg, health and social care, housing, educational services, or services with people at risk of offending. In such circumstances the provider may be acting as a public authority and be bound by the human rights obligations contained within the Human Rights Act 1998;

- some service contracts such as cleaning, catering and security guarding may involve the hiring of a higher volume of migrant workers/foreign nationals. These types of contracts are at risk of breaching the human rights of the workers. The Modern Slavery Act 2015 provides for legislation against offences of slavery, servitude and forced or compulsory labour and human trafficking. It is the responsibility of the Contracting Authority to show due diligence when awarding contracts to ensure the human rights of the workers are protected;

- goods or services purchased by public authorities may be produced by first tier suppliers or further down the supply chain under conditions where the human rights of workers or members of local communities are violated or abused, eg, due to forced labour, illegal child labour, human trafficking, excessive working hours, health and safety breaches, forced relocations or environmental pollution.

1.2 Failure to respect an individual’s human rights conflicts with international standards and domestic law. Public authorities when discharging their duties are explicitly tasked with respecting, protecting and promoting human rights, including during the public procurement process.

1.3 A human rights based approach to public procurement can be used to both prevent human rights violations and abuses and to take an active role in respecting, protecting, and fulfilling human rights. This could include, for example, contracting with a contractor/supplier that:

- has mapped its supply chains and has taken active steps to educate its suppliers to mitigate human rights violations or abuses;
actively promotes equality and non-discrimination within its workforce by, for example, actively monitoring application rates by gender, race and disability or adopting a human rights policy and sending its staff on training courses to educate them to identify potential human rights risks facing the company;

- has accessible and transparent grievance mechanisms for those it engages with including, for example, stakeholders, staff, and service-users; and

- ensures that staff and services users are aware of and have access to mechanisms that provide remedies when human rights violations and abuses have occurred.

1.4 Incorporating human rights conditions in public sector contracts can help change the behaviour of companies competing for those contracts.

1.5 In its National Action Plan to implement the UN Guiding Principles on Business and Human Rights (UNGPs) the UK Government sets out its belief that the promotion of business and human rights should go together. The action plan highlights that protection of human rights makes good business sense.

2 LEGISLATION AND GUIDELINES

2.1 The European Convention on Human Rights (ECHR) came into effect on 3 September 1953. The ECHR contains 17 key articles relating to rights and fundamental freedoms which include the right to life, the prohibition of slavery and forced labour, and the right to liberty and security.

2.2 In the United Kingdom, the Human Rights Act 1998, which came into force in October 2000, incorporates the majority of rights set out in the ECHR into domestic law. The Act requires all public authorities to respect and promote human rights. Section 24 of the Northern Ireland Act 1998 provides that Northern Ireland Departments may not commit any acts that are incompatible with the Convention rights. More recently, the Modern Slavery Act 2015 was designed to tackle slavery in the UK, its businesses and their supply chains, and consolidates previous offences relating to trafficking and slavery. Every
large company\(^1\) has a responsibility under the Act to publish a statement detailing what it is doing to prevent slavery in its business and supply chain. This will in turn require smaller sub-contractors to feed in details of their relevant policies and practices.

2.3 The Public Contracts Regulations 2015 make it mandatory for Contracting Authorities to reject abnormally low tenders if the low price is due to non-compliance with EU legislation or international law related to social, labour or environmental law. Mandatory exclusion also applies where a business has been convicted of child labour or human trafficking, and a Contracting Authority can exclude tenders if it is aware of violations of obligations by a tenderer, in the areas of social, labour law or environmental law.

2.4 Whilst not a legislative requirement, the United Nations developed a set of guidelines for States and companies to prevent and address human rights abuses committed in business operations. The UNGPs make clear that every State has the duty to protect people against abuses of their human rights by companies or other business actors. A key element of this duty is that public authorities must ensure human rights are respected when they enter commercial transactions with businesses, which includes public procurement and “contracting out” of public services. The UNGPs recognise that companies should undertake “human rights due diligence” to ensure their operations respect human rights and do not contribute to human rights abuses. Human rights due diligence requires a company to first assess actual and potential human rights impacts which may be caused by its activities, then act upon the findings, track responses, and communicate how impacts are addressed. Human rights due diligence will vary from company to company, based on the risk of human rights violations and severity of human rights impacts. This should be an ongoing process, given that the human rights risks involved may change over time. Further guidance on human rights due diligence is set out in the UNGPs.

\(^1\) The Act applies to all organisations with a turnover, or group turnover - that is, the total turnover of a company and its subsidiaries - of £36 million or more which are either incorporated in the UK or carry on a business in the UK.
3 CONTRACTING AUTHORITIES’ RESPONSIBILITIES

3.1 Contracting Authorities have a duty to ensure human rights are respected, as detailed in the previous section, when they enter commercial transactions with contractors.

3.2 When entering into any commercial contracts, Contracting Authorities should assess the level of risk involved in each contract and provide a procurement strategy which will highlight where potential human rights breaches could take place and should incorporate these considerations into the contract documentation, where appropriate to require that:

- a Contractor's practices meet, or exceed, minimum human rights standards;
- a Contractor must not use forced labour in the delivery of services;
- the protection of human rights must be maintained in the delivery of public services;
- processes are in place to prevent unequal treatment or harassment;
- the Contractor must have respect for human rights in their supply chains.

3.3 Contractors have a responsibility as well as Contracting Authorities to respect human rights. The Equality and Human Rights Commission in Great Britain has developed a guide entitled Business and human rights: A seven-step guide for managers, which will help companies identify, address and report on the human rights impacts of their activities.
3.4 Bodies subject to NIPPP must be able to demonstrate:


- as a minimum, in all contracts, use of the standard terms in PGN 06/14 Public Sector Conditions of Contract for Supplies and Services or PGN 01/15 Standardisation of NEC3 Engineering and Construction Contract Z Clauses requiring Contractors to ensure their compliance with all appropriate legislation in respect of human rights;

- that they have considered and are aware of the potential risks to human rights in their areas of operation;

- that the need for further provisions in the specifications to protect human rights has been addressed on a risk basis and additional measures put in place as necessary.

4 IDENTIFYING POTENTIAL RISK TO HUMAN RIGHTS

4.1 There is no standard approach to adopt when assessing potential human rights issues in any given contract. The very nature of a contract may imply there is an obvious potential for an individual’s human rights to be violated or abused: for example, services to the person. Contracts or clauses of contracts should be subject to a proportionate level of assessment to mitigate potential issues during the procurement process and the life of the contract in question.

4.2 There are 3 specific groups that should be considered when assessing human rights risks, namely:

4.2.1 End users: this describes the intended recipients of the service or product supplied by a potential contractor. Questions to consider when assessing the risk to end users could include:

- Is the provision of the service subject to statutory regulation?
• Will the end user have to interact with contractor staff and, if so, what safeguards and checks should be put in place to address any potential risks?
• Are the end users aware of their human rights, and able to know when those rights are at risk of being violated or abused?
• Are there previous instances of end users being subject to violations or abuse?
• What measures are in place that allow end users to raise concerns if they feel there has been a violation or abuse of their human rights?
• What measures are in place that allow end users to receive a remedy if their human rights are violated or abused?

4.2.2 The contractor’s staff: this describes the people that the Contracting Authority would deal with on a day-to-day basis, the first tier of the supply chain. Questions to consider when assessing the risk to the contractor’s staff could include:

• What commitments does the contractor make to respect, protect and fulfil human rights?
• How is the commitment developed and does it identify all potential risks of human rights violations or abuses?
• How is this commitment disseminated?
• Is there evidence of an accessible and transparent grievance procedure throughout the supply chain?

4.2.3 Staff in a potential contractor’s sector/previous identified historical issues: this describes those staff working for suppliers below the first tier. Such staff may work outside the EU, making components of a larger end product for example. Questions to consider when assessing the risk to staff in the supply chain could include:

• Is there any previous experience of poor work practices, forced labour or environmental hazards?
• Is there any history of discrimination, such as low pay or unequal pay in that sector, or perhaps gender specific discrimination?
• Is there a risk that staff working on the contract might be subject to exploitative practices? eg through the misuse of zero-hours contracts, or through unnecessary distancing of the employer-worker relationship (such
as by the use of an “umbrella company”) or through pay and hours arrangements that deny workers stability of employment or hours of work?

- Is there evidence of restrictions on Unions being formed in the sector or on the exercise of collective bargaining?

- Are staff aware of grievance procedures in place, should they wish to report a potential risk or violation of human rights?

4.3 The resultant level of risk identified will have an impact on the procurement process and the amount of contract monitoring required in relation to human rights.

4.4 Where a contract has been identified as having a low risk of violation or abuse of human rights then it might be acceptable to simply accept a self-declaration from the contractor stating it is aware of potential human rights issues and has policies in place to address them. The Public Sector Standard Conditions of Contract require contractors to indemnify and keep indemnified the Contracting Authority against any human rights violations or abuses and may be enough to address low risk contracts.

4.5 In the case of a medium level of risk of violation or abuse of human rights having been identified, further reassurance may be needed from the contractor and the need to have some form of official policy could be included along with formal reporting mechanisms. For example, CPD recently added the following to a tender for agency workers:

**Human Rights Considerations**

*Contractors must develop and maintain a human rights policy which must be approved at board level.*

*Within 30 days of Award, Contractors must provide a copy of their human rights policy and the processes they have in place which demonstrates that their activities show a consideration to human rights.*

4.6 If a Contracting Authority is concerned there could be a high risk to human rights during a contract, it may be necessary to put more stringent measures in place which could include site inspection and regular audits of sites throughout the supply chain.
4.7 As a minimum for a higher risk contract, it would be advisable to request the Contractor to provide a human rights statement which should provide information on:

- statistics on employment, eg women, persons with disabilities, ethnic minorities, other vulnerable groups;
- complaints/grievance mechanisms, whether these are easily accessible and who has access to them;
- mechanisms for monitoring compliance and reporting thereon;
- measures in place to improve human rights protections;
- visibility of the Contractor’s supply chain.

4.7.1 The Contractor should be required to provide a human rights policy which should be agreed at board level and published on their website. The Contractor should make their supply chain aware of their human rights policy and, where appropriate, require the sub-contractors to publish a human rights policy.

4.7.2 The Contractor should complete a form certifying that they and their sub-contractors involved in the contract are fully compliant “to the best of their knowledge” with certain CoPE standards, for example the CPD Supplier Code of Conduct.

4.7.3 The contract requirements could also include the right to independent monitoring of the factory/office, inspections across all jurisdictions where requested – announced, semi-announced, and unannounced.

4.7.4 There may also be a requirement inserted that the Contractor will be expected to have their own Human Rights Policy, or to develop one within 30 days from the signing of the contract.
4.7.5 A Contracting Authority could encourage contractors to use the following schematic process when assessing human rights risks and impacts:

- Determine scope and plan assessment
- Develop assessment methodology and plan stakeholder engagement
- Collect Data
- Analyse data and prioritise issue areas
- Define and implement follow-up actions
- Monitor compliance, communicate performance and re-assess if necessary

5 INCORPORATING HUMAN RIGHTS CONSIDERATIONS IN CONTRACTS

5.1 Once a Contracting Authority has assessed the level of risk associated with a contract, it must consider the method for including specific human rights requirements into the tender process. This can be done by including it as a condition of contract or a requirement within the specification. The Public Sector Standard Conditions of Contract contain some clauses which will address human rights risks such as Health and Safety, Discrimination, Environment, reference to the Human Rights Act and Modern Slavery Act. Other requirements, listed in 4 above, could be included in the specification according to the level of human rights risks identified. Contracting Authorities should refer to PGN 06/14 Public Sector Standard Conditions of Contract to make themselves aware of existing obligations on contractors.
5.2 When including human rights obligations in contracts, a Contracting Authority should consider the following:

- The requirement should be proportionate to the level of risk identified. For example, treating all contracts as high risk may provide full assurance to a Contracting Authority but this, in turn, could place onerous requirements on suppliers and possibly discourage them from bidding potentially reducing competition. The need to achieve value for money must simultaneously take account of the obligations to respect, protect and fulfil human rights.

- A Contracting Authority should give consideration as to how requirements can be monitored or verified as required. This could mean using an accredited third party such as Electronics Watch, an independent body which equips public sector organisations to monitor and protect the rights of workers' in their electronics supply chains.

- A Contracting Authority should make the necessary contract management provisions to continually monitor during the life of the contract. This will include explicit reference to any sanctions to be applied if requirements are breached and remedy to be provided to the affected service users.

5.3 Small and Medium Sized Enterprises (SMEs) make up a large proportion of the Northern Ireland supply base. One of the biggest problems facing SMEs is the lack of resources and knowledge surrounding human rights issues. An SME contracting with the public sector is bound by the Public Sector Standard Conditions of Contract which cover some human rights issues such as Health and Safety etc. Contracting with the public sector and being asked through contract requirements to develop, for example, a Code of Conduct will help improve SMEs' awareness of human rights within their organisation and make them aware of their responsibilities under the UNGPs.
6 FURTHER INFORMATION

Any queries on this guide should be addressed to:

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Construction and Procurement Delivery  
2nd Floor East  
Clare House  
303 Airport Road West  
Belfast, BT3 9ED  
Phone: 028 9081 6233  
Email: procure.policy@finance-ni.gov.uk

Further information on human rights should be addressed to:

Northern Ireland Human Rights Commission  
Temple Court,  
39 North Street,  
Belfast, BT1 1NA  
Phone: 028 90243987  
Email: info@nihrc.org  
Textphone: 028 9024 9066  
SMS Text: 077 8620 2075
USEFUL LINKS


http://www.ungpreporting.org/reporting-framework/


http://supply-chain-self-assessment.unglobalcompact.org/


https://hrca2.humanrightsbusiness.org/


https://www.humanrights.dk/sites/humanrights.dk/files/media/billeder/udgivelser/values_added_report_dihr.pdf
MULTI-STAKEHOLDER INITIATIVES

Company membership in a relevant multi-stakeholder initiative assists in publicly demonstrating implementation of the application principles.

Many exist so you can find them or ask your supplier to tell you which ones they belong to:

**Northern Ireland Business and Human Rights Forum**

The Northern Ireland Business and Human Rights Forum was established by the Northern Ireland Human Rights Commission in 2015. It is a multi-stakeholder platform which allows Government, business, and civil society to engage on business and human rights. Its work is directed by members, with reference to the UN Guiding Principles on Business and Human Rights. Forum meetings are held quarterly and are open to new membership.

[https://www.sedexglobal.com/](https://www.sedexglobal.com/)

Sedex is a global not-for-profit membership organisation. They are home to the world’s largest collaborative platform for sharing responsible sourcing data on supply chains.

**sustainable apparel coalition (sac)**

The higg index is the core driver of the sac. This groundbreaking suite of self-assessment tools empowers brands, retailers and facilities of all sizes, at every stage in their sustainability journey, to measure their environmental and social and labor impacts and identify areas for improvement. Higg delivers a holistic overview of the sustainability performance of a product or company—a big-picture perspective that is essential for progress to be made.

**electronic industry citizenship coalition**

Vision: a global electronics industry that creates sustainable value for workers, the environment and business.

Mission: members, suppliers and stakeholders collaborate to improve working and environmental conditions through leading standards and practices.
electronics watch

Electronics watch is an independent monitoring organisation that assists public sector buyers to meet their responsibility to protect the labour rights of workers in their global electronics supply chains more effectively and less expensively than any single public sector buyer could accomplish on its own.