

## Contract Management: Human Rights Policy and Due Diligence

This document aims to help you ensure the delivery of Human Rights requirements in contracts that you manage.

Human Rights requirements in public contracts contribute to the Northern Ireland Executive's vision to "have an equal and inclusive society where everyone is valued and treated with respect".

Here we outline:

- The fundamental concepts behind maximising social value in public contracts
- NI Executive commitments, policies and procedures related to Human Rights
- What social value clauses ask of suppliers regarding Human Rights
- Tools and resources to ensure Human Rights are upheld throughout the supply chain
- How to contact the Social Value Unit for advice

### Maximising social value in public contracts

Social value is about maximising the social, economic and environmental benefits delivered through public procurement. The social value model used across the public sector in Northern Ireland is built upon 4 key themes:

- Increasing secure employment and skills
- Building ethical and resilient supply chains
- Delivering zero carbon
- Promoting Well-being

By including social value in procurement we can:

- Create job opportunities for people who face barriers to work
- Invest in skills
- Support Social Enterprises and new businesses
- Support Voluntary and Community organisations
- Reduce poverty
- Promote equality and diversity
- Reduce our carbon footprint
- Improve mental health and wellbeing

Including ethical supply chain requirements can help Contracting Authorities:

- Deliver best value for money
- Achieve and report against specific strategic objectives
- Reduce any risk of Human Rights violations and subsequent organisation reputational damage
- Lead by example

### Why does social value include Human Rights requirements?

Social value requirements addressing human rights are included on contracts where an increased risk of violation or abuse of Human Rights has been identified. This could be because the contract's supply chain includes vulnerable workers/end users or the sector as a whole has historical issues, for example.

While the language of Human Rights may be unfamiliar to some businesses, most companies have policies and procedures that cover a number of human rights issues. Examples include occupational health and safety policies or procedures prohibiting the use of child labour or forced labour.

Since 2011, the [UN Guiding Principles on Business and Human Rights](#) (UNGPs) have been viewed as the authoritative global reference on business and human rights. The UNGPs recommend that businesses should expand what they already have in place to develop a Human Rights due diligence approach, through which they will be able to assure stakeholders that they are taking reasonable steps to avoid infringing upon the rights of others and tackling infringements where they occur.

Here is [a useful overview of the UN Guiding Principles](#), as well as a short video and answers to some Frequently Asked Questions.

The key to Human Rights due diligence is good communication and sharing of information between Suppliers and the Contracting Authority, so that any negative impacts on Human Rights through business are addressed and prevented. This is what the requirement aims to deliver.

### NI Executive commitment to Human Rights

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.

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<sup>1</sup> 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.

Contracting Authorities have a duty to ensure Human Rights are respected when they enter commercial transactions with contractors.

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<sup>1</sup> 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.

[PGN 03/18 Human Rights in Public Procurement](#) was endorsed by the Procurement Board with effect from 19 December 2018 for use by those bodies subject to Northern Ireland Public Procurement Policy. PGN 03/18 states:

*“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.”*

Social considerations are part of the contract and should be adequately managed to ensure that they are delivered in line with contract commitments. [PGN 01/13](#) states that *“when social considerations have been identified in the contract, then those requirements must be delivered in full. The Project Manager/Contract Manager must ensure that the Contractor’s performance is carefully monitored. Poor performance by the Contractor on the delivery of requirements relating to social considerations must be addressed in accordance with the recommendations on poor contractor performance set out in [Procurement Guidance Note 01/12](#)”*.

## Social Value contract clauses re: Human Rights

Human Rights clauses require suppliers to:

- Develop and/or submit a copy of their **Human Rights’ policy and the processes they have in place** which demonstrate that their activities, including those within their supply chain, in relation to the contract show a consideration to Human Rights.
- Submit **an annual progress report** to the Contracting Authority which should be in writing and detail the steps taken by the Contractor and its subcontractors (if any) to implement the Human Rights policy and procedures on the contract.
- Allow the Contracting Authority to inspect supply chains, survey workers on workforce matters and request information on how payment for services is managed, if required.

(Note: Make sure to check the specific clauses included in the contract you manage, as Contracting Authorities can edit clauses to meet their strategic priorities.)

These clauses are included by the Contracting Authority in order to:

- Reduce the risk of Human Rights violations and abuses.
- Take an active role in respecting, protecting and fulfilling Human Rights.
- Help to influence the behaviour of companies competing for public contracts.

## Helpful Tips and Resources

To learn more about Human Rights and Procurement:

- Watch the Northern Ireland Human Rights Commission’s short [video](#).
- Take the [Introduction to Human Rights e-learning course](#) on [NICS Links](#).
- Find out more about Human Rights law and standards and the core principles through which Human Rights are realised via the [Northern Ireland Civil Service \(NICS\) Human Rights Guide](#).
- Take the [Open Learn course on Modern Slavery](#).

#### At Contract Award/Commencement:

- Check the contract clause to find out how many days from contract award/commencement the Supplier has to submit their Human Rights policy and information on their processes. This is usually 30 or 60 days.
- Ask the Supplier if they already have a Human Rights policy or if they will need to develop one.
- If the Supplier needs to develop a Human Rights policy, you can direct them to the following resources for guidance:
  - [Business and Human Rights: A seven-step guide for managers](#)
  - [United Nations - A Guide for Business: How to Develop a Human Rights Policy](#)
  - ['Doing Business With Respect for Human Rights'](#)
- Remind the Supplier of the date by which the Human Rights policy must be submitted.

#### Reviewing the Supplier's Human Rights Policy:

The Supplier's Human Rights policy should provide clarity to their staff and external stakeholders about what the Supplier expects in regard to Human Rights. This means it should be tailored to the Supplier's particular circumstances, industry and Human Rights risks. The policy will need to be updated over time to include lessons learnt and reflect new insights into the Supplier's Human Rights challenges.

The Supplier's Human Rights policy can be a standalone statement or be integrated into existing policies, such as company statements of business principles, codes of conduct or other values-related literature.

#### A Human Rights Policy should:

- Explicitly use the words 'Human Rights'.
- State the company's commitment to respect Human Rights in line with national and international standards, such as the Human Rights Act 1998, UN Guiding Principles and the International Labour Organization's core conventions.
- Set out the company's expectations of its staff and other workers it employs.
- Tell customers, business partners and others what they can expect of the business; for example:
  - Set out the company's complaints/grievance mechanisms, whether these are easily accessible and who has access to them;
  - Set out the company's mechanisms for monitoring compliance and reporting thereon;
  - Set out the measures the company has in place to improve human rights protections.
- Identify the Human Rights issues most relevant to the business' operations and throughout its supply chain.
- Commit to an ongoing review of the policy and the business' Human Rights impacts.

['Doing Business With Respect for Human Rights'](#) sets out [building blocks and examples of company policy commitments](#) which can help Contract Managers understand what a Human Rights policy should look like and identify any gaps or suggestions for improvement in their Supplier's policies.

#### At Contract Review Meetings:

- Add Human Rights to the meeting agenda
- Ask questions to open communication and share information:
  - What's the labour market like at the minute?
  - How is the current climate affecting your labour supply/costs?
  - Is that increasing the risk of Human Rights violations across the supply chain?
  - How do you support your workers to understand their rights if English isn't their first language?

- Use [Stronger Together's Suppliers' Self-Assessment Questionnaire](#). This can be issued in advance and then discussed at the meeting or you can use it as a tool to help you ask the Supplier relevant questions. The Questionnaire should not be seen as a one and done, tick box exercise but, rather, a tool to encourage and frame discussion of Human Rights issues throughout the duration of the contract.
- Remind the Supplier of the date by which the Human Rights Annual Progress Report must be submitted.
- Encourage the Supplier to log their progress to date in the Social Value Monitoring System.

### Reviewing the Supplier's Human Rights Annual Progress Report:

The Annual Progress Report should be submitted to the Contracting Authority on the anniversary of contract/award commencement. It should be in writing and detail the steps taken by the Contractor and its subcontractors (if any) to implement the Human Rights policy and procedures on the contract.

Describing Human Rights impacts and how they are managed often requires contextual and qualitative information. It may be useful to ask the questions set out in the table below when reviewing the Supplier's Annual Progress Report, which are [key quality indicators identified as part of the UN Guiding Principles Reporting Framework](#):

#### *Quality indicators of good corporate Human Rights reporting*

1. **Governance:** Does the reporting explain how the company's governance structures support the management of Human Rights risks?
2. **Specific processes:** Does the reporting go beyond high-level statements of policy and commitment and discuss specific processes for implementing respect for Human Rights?
3. **Specific impacts:** Does the reporting refer to specific impacts that occurred within the reporting period and are associated with the company's operations or value chain?
4. **Clear examples:** Does the reporting provide clear, relevant examples of how the company's policies and processes have influenced practice and outcomes within the reporting period?
5. **Stakeholder perspectives:** Does the reporting explain how the company gains the perspective of stakeholders who could be negatively impacted?
6. **Challenges:** Does the reporting discuss complex or systemic Human Rights challenges and how the company grapples with them?
7. **Metrics:** Does the reporting include specific data, key performance indicators or other metrics that offer clear and relevant evidence to support the narrative?
8. **Forward focus:** Does the report include information about the company's plans for advancing its efforts to respect Human Rights?
9. **Strategic initiatives:** If the reporting references particular initiatives, for example, projects, third-party assessments or participation in industry or multi-stakeholder organisations, does it make clear how these initiatives help the company advance its own management of Human Rights risks?
10. **Improving disclosure:** Where this is not the first year of Human Rights reporting for the company, does the reporting show improvements in the quality of its disclosure in comparison with previous years, taking into account the indicators set out above?

The [Reporting Framework website](#) contains a range of examples of company reports that have met these indicators to a moderate or strong degree. Examples are drawn from the reporting of AngloAmerican, Coca-Cola Company, Ericsson, Gap Inc., H&M and Unilever. It can be useful to read these to understand how Human Rights Progress Reports may be improved, or to share them with Suppliers if real life examples from other businesses' may help them with their own reporting.

It is important to remember that this type of monitoring and reporting may be new to Suppliers, and that the key to minimising any Human Rights risks is good communication and sharing of information between Contracting Authorities and their suppliers. Whilst the contract requirements must be met, Suppliers may need support and advice in their delivery of the Human Rights requirements. You can help the Supplier by discussing their progress at Contract Review meetings and drawing their attention to the resources set out in the Social Value Unit's [Guidance for Suppliers: Human Rights Policy and Due Diligence](#).

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. Contracting with the public sector and being asked through contract requirements to develop, for example, a Human Rights policy will help improve SMEs' awareness of Human Rights within their organisation.

#### Monitoring of Human Rights requirements

The Supplier will be required to record the delivery of their Human Rights policy on the Social Value monitoring system. They are not required to upload it to the system – they deliver the policy to the Contracting Authority.

The Supplier can use the Notes section of the Social Value Monitoring System to log their progress against the delivery of their social value requirements.

Both the Supplier's and the Contracting Authority's Contract Managers will receive an automated report via email from the Social Value Monitoring System that sets out the requirements and what has been delivered against each of them to date. These reports should be reviewed regularly at contract review/progress meetings.

#### *Procurement Guidance Note 01/13*

Social considerations are part of the contract and should be adequately managed to ensure that they are delivered in line with contract commitments. [PGN 01/13](#) states that *“when social considerations have been identified in the contract, then those requirements must be delivered in full. The Project Manager/Contract Manager must ensure that the Contractor's performance is carefully monitored. Poor performance by the Contractor on the delivery of requirements relating to social considerations must be addressed in accordance with the recommendations on poor contractor performance set out in [Procurement Guidance Note 01/12](#)”*.

The reputation of a Department and Contractor can be damaged by a poorly managed contract that does not deliver the expected outcomes.

It is the responsibility of the Client Project Manager to monitor and review the contract including:

- Reviewing regular reports on how the human rights obligations are being delivered.
- Addressing under-achievement.

## How to contact the Social Value Unit for advice

The Strategic Investment Board's Social Value Unit are available to offer support and advice to both Contracting Authorities and Suppliers who deliver contracts which include social value requirements. The Social Value Unit's Advisors can attend contract initiation and progress meetings, if required.

To contact the Social Value Unit, email [info@buysocialni.org](mailto:info@buysocialni.org)