



Procurement Policy Note

PPN 05/21

Human Rights in Public Procurement

Issued: 22 November 2021

PROCUREMENT POLICY NOTES

[Northern Ireland Public Procurement Policy \(NIPPP\)](#) is approved by the Northern Ireland Executive and is mandatory for central government Departments, Non-Departmental Public Bodies and Public Corporations.

Procurement Policy Notes (PPNs) set out the Executive's policy.

If a Department wishes to opt out of this policy it must attain Ministerial approval.

Revision History

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Definition of Terminology

In the preparation of this policy, 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 \(NIPPP\)](#)

1 PURPOSE

- 1.1 The purpose of this Procurement Policy Note (PPN) is to mandate the actions that Departments must take to incorporate human rights considerations into contracts when conducting a procurement process.

2 BACKGROUND

- 2.1 Decisions made in public procurement processes can have consequences on the human rights of people employed to deliver goods and services through government contracts. 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; for example, 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 Department to show due diligence when awarding contracts to ensure that 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; for example, due to forced labour, illegal child labour, human trafficking, excessive working hours, health and safety breaches, forced relocations or environmental pollution.

- 2.2 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.
- 2.3 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.
- 2.4 Incorporating human rights conditions in public sector contracts can help change the behaviour of companies competing for those contracts.
- 2.5 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.

3 DEPARTMENTS' RESPONSIBILITIES

3.1 Departments 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, Departments must assess the level of risk involved in each contract and produce a procurement/sourcing strategy that identifies potential human rights breaches and put measures in place to mitigate them. They 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 Bodies subject to NIPPP **must** be able to demonstrate:

- compliance with the:
 - Human Rights Act 1998,
 - Northern Ireland Act 1998,
 - Modern Slavery Act 2015, and
 - other relevant legislative standards;
- as a minimum, in all contracts, standard terms should be incorporated to ensure 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 three specific groups that must be considered when assessing human rights risks; namely:

- **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?

- **the contractor's staff:** this describes the people that the Department 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?

- **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 UK, 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? For example, 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 trade 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, the Contractor must be asked to self-declare it is aware of potential human rights issues and has policies in place to address them.
- 4.5 In the case of a medium level of risk of violation or abuse of human rights having been identified, the contractor must be asked to provide a form of official policy, along with formal reporting mechanisms.
- 4.6 If a Department is concerned there could be a high risk to human rights during a contract, it must put 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, the Contractor must provide a human rights statement on:
- statistics on employment; for example, 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.
- 4.8 The Contractor must provide a [human rights policy](#), agreed at board level and published on their website. The Contractor must make their supply chain aware of their human rights policy and, where appropriate, require the subcontractors to publish a human rights policy.

- 4.9 The contract requirements must include the right to independent monitoring of the factory/office, inspections across all jurisdictions where requested: announced, semi-announced, and unannounced.
- 4.10 A Department 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 that equips public sector organisations to monitor and protect the rights of workers in their electronics supply chains.
- 4.11 A Department 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 MONITORING AND REPORTING

- 5.1 It is important to monitor the actions taken by Departments to identify and manage human rights risks in contracts.
- 5.2 Departments must provide details to CPD on the actions taken to address human rights risks for publication in the Annual Procurement Report.

6 FURTHER INFORMATION

Any queries on this PPN should be addressed to:

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Construction & Procurement Delivery
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Further information on human rights can be obtained from:

Northern Ireland Human Rights Commission

4th Floor Alfred House
19-21 Alfred Street
Belfast
BT2 8ED
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