



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Public Procurement and Human Rights

in Northern Ireland



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Foreword

The Northern Ireland Human Rights Commission (NIHRC) recognises the significant role of the private sector in the provision of goods, facilities and services. In many instances, government departments and other public authorities will have purchased these goods and services. In doing so, they must ensure the protection and promotion of human rights.

Private companies contracted by government departments or public authorities, and, in particular, those who carry out service delivery to the general public, may make decisions or take actions that affect human rights. In such circumstances the services must be delivered mindful of the continuing need to maximise the enjoyment of human rights and prevent abuses.

At the United Nations (UN), considerable work has already been undertaken to provide governments and businesses with guidance on how to best tackle these issues. The UN Guiding Principles on Business and Human Rights (UNGPs), unanimously endorsed by the UN Human Rights Council in 2011, are a set of standards for preventing and addressing the risk of adverse impacts on human rights linked to business activity.

In 2013 the United Kingdom (UK) government adopted an Action Plan in which it made a strong commitment towards implementing the UNGPs throughout the UK.

Recognising the importance of the subject matter, the NIHRC has developed this report to advise on the applicable human rights standards in the context of procurement. It aims to engage government departments, other relevant public authorities and private companies, to promote awareness of the important relationship between human rights and business in Northern Ireland. The report does not claim to represent a comprehensive examination of all issues but is intended to initiate a discussion on the relevant topics.

The NIHRC is extremely grateful to the Danish Institute for Human Rights for their work in assisting the development of this report.



Abbreviations

BSO	Business Services Organisation
CESCR	UN Committee on Economic, Social and Cultural Rights
CJEU	Court of Justice of the European Union
CoPes	Northern Ireland Centres of Procurement Expertise
CPD	Northern Ireland Central Procurement Directorate
CSR	Corporate Social Responsibility
DIHR	Danish Institute for Human Rights
EC	European Commission
ECFR	The European Charter of Fundamental Rights
ECHR	European Convention on Human Rights
EQIA	Equality Impact Assessment
EU	European Union
GB	Great Britain
GDP	Gross Domestic Product
HRA	UK Human Rights Act 1998
HRB	Human Rights and Business
HRC	UN Human Rights Council
HSC	Health and Social Care
HSCB	Health and Social Care Board
ICC	International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights
ILO	International Labour Organisation
NIHRC	Northern Ireland Human Rights Commission
NHRI	National Human Rights Institution
OECD	Organisation for Economic Cooperation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
PCC	Patient and Client Council
PfG	Programme for Government
PHA	Public Health Agency
PPG	Northern Ireland Procurement Practitioners Group
SME	Small and medium-sized enterprise
SRPP	Socially Responsible Public Procurement
TFEU	Treaty on the Functioning of the European Union
UK	The United Kingdom of Great Britain and Northern Ireland
UNDP	United Nations Development Programme
UNGC	United Nations Global Compact
UNGPs	UN Guiding Principles on Business and Human Rights
WTO	World Trade Organisation

Executive Summary

This report considers the legal rules, policies and practices of public procurement in Northern Ireland, and evaluates the extent to which these respect human rights. This focus is timely and aims to:

- ensure the engagement by public authorities of private companies whose practices meet human rights standards;¹
- reduce the presence of forced labour in Northern Ireland;²
- ensure the protection of human rights in the delivery of public services;³
- address unequal treatment and harassment in the private as well as public sector in Northern Ireland;⁴
- encourage respect for human rights in the global supply chains of private companies.⁵

Both international and domestic laws applying in Northern Ireland make clear that all public authorities and all businesses must fully respect human rights. It is also clear that this applies to public procurement and publicly procured goods and services.⁶ Government and private sector companies have responsibilities to ensure that human rights are respected in the conduct of public procurement processes, in the terms of contracts, and performance. The report:

- sets out the legal rules and principles that govern the conduct of public procurement in Northern Ireland;
- describes measures taken by public authorities in Northern Ireland to give effect to these rules and principles;
- evaluates these measures against relevant human rights standards.

Key findings

Public procurement in Northern Ireland is conducted within an extensive legal and policy framework that is intended to align with obligations placed on public authorities by domestic, regional and international human rights law.

However, as this report describes, further steps need to be taken by public authorities to ensure that human rights are fully respected in connection with public procurement. In particular:

Legal and policy frameworks: Current legislation and policy do not make sufficiently clear or explicit how the state's positive duties to protect human rights are to be operationalised by public authorities in the course of purchasing activities. Nor do they highlight the free-standing responsibilities of businesses to respect human rights as highlighted by the UN Guiding Principles on Business and Human Rights (UNGPs).

¹ See: <http://www.bailii.org/ew/cases/EWHC/Admin/2012/1804.html>.

² Forced labour in Northern Ireland: Exploiting vulnerability, Joseph Rowntree Foundation, Institute for Conflict Research 2011.

³ "In Defence of Dignity: The Human Rights of Older People in Nursing Homes", Report of the NIHR: <http://www.nihrc.org/documents/research-and-investigations/older-people/in-defence-of-dignity-investigation-report-March-2012.pdf>.

⁴ "Do you mean me? Discrimination: attitudes and experience in Northern Ireland", Report of the ECNI 2011 Equality Awareness Survey: [http://www.equalityni.org/archive/pdf/DYMMSurveyMainReport\(webB\).pdf](http://www.equalityni.org/archive/pdf/DYMMSurveyMainReport(webB).pdf).

⁵ See e.g. Joint Committee on Human Rights, *Any of our business? Human rights and the UK private sector*, First Report of Session 2009-10, Vol.1, HL Paper 5-1, HC 64-I. The recent collapse of a building housing garment factories in Bangladesh, at the cost of over 1100 lives, provides a tragic example: <http://www.reuters.com/article/2013/05/13/us-bangladesh-building-idUSBRE94C0BL20130513>.

⁶ This is highlighted in the General Comment of the UN Committee on the Rights of the Child Regarding Child Rights and the Business Sector: http://www2.ohchr.org/english/bodies/crc/docs/Draftone_CRCGC_ChildRightsandBusinessSector.doc, accessed 19-03-2013, and the Statement on the obligations of States Parties regarding the corporate sector and economic, social and cultural rights, Committee on Economic, Social and Cultural Rights. Forty-sixth Session, Geneva, 2-20 May 2011: <http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.2011.1-ENG.doc>, accessed 19-03-2013.

Guidance and other support for implementation: The current guidance for public authorities on conducting procurement published by the Central Procurement Directorate (CPD) contain no specific references to human rights, even for those areas where human rights risks are present.

Public services: Steps must be taken to ensure that, in accordance with the intention of section 6 of the Human Rights Act 1998, human rights are fully respected in the commissioning, contracting and delivery of public services by private and third sector providers.

District councils: District councils are subject to the same EU and domestic legal obligations on public procurement as government departments. However, there is no dedicated policy framework, guidance or other support for district councils relating to human rights and procurement.

Excepted and reserved matters: Concerns have been raised in Northern Ireland that public purchasing of services connected to excepted and reserved matters, in particular, security services connected to asylum and immigration, does not adequately reflect state and private sector responsibilities to respect human rights.

Summary of recommendations (See Chapter 5)

Theme	Recommendations
Legal and policy frameworks	The Northern Ireland Executive should legislate to make it clear that both human rights legal obligations and domestic equality laws apply to public procurement and to establish sanctions for companies responsible for breaches.
	Government departments in Northern Ireland, the CPD and the Procurement Board should review and revise the policy framework for public procurement in Northern Ireland to ensure effective respect for human rights in accordance with the duties identified under the Human Rights Act 1998 and the UNGPs.
Guidance and other support for implementation	Requirements for public authorities and businesses to respect human rights should be fully integrated into general guidance materials on public procurement in Northern Ireland.
	The CPD should immediately develop a Guidance Note on Public Procurement and Human Rights to address how human rights can be effectively mainstreamed throughout each step of the procurement process.
	The CPD should disaggregate services and products purchased by public authorities according to human rights engaged and identify, where appropriate, risk management measures in relation to high, medium and low risk purchase categories, addressing each stage of the procurement process.

Theme	Recommendations
	<p>Procurement personnel across all government departments and other relevant public authorities should receive training on human rights.</p> <p>Information, advice and training should be made available to tenderers, particularly SMEs, on achieving respect for human rights in a business context.</p>
Public services	The Northern Ireland Executive should ensure that departments identify public services delivered privately within their respective policy areas. This should be followed by an evaluation of human rights risks associated with such services, and the implementation of appropriate measures to mitigate such risks, in line with the UNGPs.
District councils	The Department of the Environment should ensure that dedicated guidance is developed for district councils on integrating human rights into procurement processes.
Excepted and reserved matters	The Northern Ireland Executive should ensure clear lines of accountability between the devolved administration and UK central government regarding human rights protection in public contracts related to excepted and reserved matters.

Introduction

The purchase of goods and services by the public sector is a major component of the overall economy in Northern Ireland. State procurement has consequences for the enjoyment of human rights in a range of ways. For instance:

- Government may require firms competing for public contracts to demonstrate their compliance with specific legal duties, e.g. relating to equal treatment;
- goods or services purchased by public authorities may be produced outside of Northern Ireland under conditions where human rights of workers or local communities are abused, e.g. due to forced labour, excessive working hours, health and safety breaches, forced relocations or environmental pollution;
- the human rights and dignity of older people or persons with disabilities may not be respected by private or third-sector providers of residential or homecare services purchased by local authorities;
- contracts for local infrastructure development can be designed to provide training and re-skilling opportunities for youth and those who are affected by long-term unemployment, in line with the right to work.

In Northern Ireland, some of these issues are brought into stronger focus by the Human Rights Act 1998 (HRA). Section 6 of the HRA makes it unlawful for any public authority to breach human rights. Section 6 extends to all acts of public authorities, including purchasing. It therefore applies to contracts entered into by public authorities for the delivery of public services, such as housing, health and social care, security services, and management of prisons and detention facilities related to asylum and immigration.

Section 6 also applies to any person carrying out “functions of a public nature”, which Parliament intended to cover private or third-sector providers delivering services on behalf of the state. There is limited evidence of public authorities identifying and applying adequate measures to ensure that human rights are fully respected by such providers. This leaves a gap in human rights protection for people reliant on the services they provide.

In 2011, the UN adopted a set of *Guiding Principles on Business and Human Rights* (UNGPs). 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 wherever they enter commercial transactions with businesses, which includes public procurement and contracting out of public services.

At the same time, the UNGPs state that all businesses have a responsibility to respect human rights, which applies irrespective of their size, sector or country of operation, and which extends to their business relationships, including the supply chain.⁷ This corporate responsibility to respect human rights is different from Corporate Social Responsibility (CSR) because, whereas CSR is often associated with voluntary actions, the corporate responsibility to respect human rights derives from international human rights treaties, which are legal standards.⁸

Taken together, these principles mean that public authorities must look beyond the impact of public procurement on the human rights of people in Northern Ireland. In purchasing goods and services from suppliers in other countries, public authorities are under a duty to take reasonable measures to ensure they are not implicated in human rights abuses across the supply chain. Further, the government and public authorities must require and support businesses themselves to achieve respect for human rights in practice.

⁷ UN Guiding Principles on Business and Human Rights, Guiding Principle 14: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf, accessed 31-01-2013.

⁸ *Ibid.* Guiding Principle 12.

Given the global reach and complexity of supply chains today, this might at first appear an impossible task. However, this report's recommendations identify practical measures that can be adopted by purchasing authorities and others that would significantly reduce risks of human rights abuses.

1.1 Scope

Pursuant to its statutory duties under section 69(1) of the Northern Ireland Act 1998, the Northern Ireland Human Rights Commission (NIHRC) reviews the adequacy and effectiveness of law and practice relating to the protection of human rights.⁹ In accordance with this function, the NIHRC provides advice and promotes understanding and awareness of human rights in the jurisdiction. The UN Human Rights Council¹⁰ has recognised the role of National Human Rights Institutions (NHRIs) established in line with the UN General Assembly's 1993 Paris Principles¹¹ to support the implementation of the UNGPs. It outlines a specific role in helping "States identify whether relevant laws are aligned with their human rights obligations and are being effectively enforced".¹²

This report concentrates on the need for public authorities to take steps to avoid violating human rights in the course of purchasing activities. The role of government in promoting sustainable local economic and social development is an important one which the Northern Ireland Executive has addressed through the *Programme for Government 2011-15* (PFG).¹³ The potential of public procurement to support the realisation of human rights through economic and social development is acknowledged in this report but sits outside of the focus of the current study.¹⁴

1.2 Methodology

This report was developed on the basis of desk-top research as well as a series of interviews with stakeholders. The desk-top study sought to:

- examine the extent to which current frameworks and practices for public procurement in Northern Ireland are aligned to applicable legal requirements at domestic, European and international levels, as well as relevant best practices;
- make recommendations to close any gaps in human rights protection resulting from current frameworks and practices.

Semi-structured interviews were conducted with a selected group of stakeholders. Interviewed stakeholders included personnel from relevant public authorities, devolved human rights institutions, civil society and trade union organisations, and academia. A set of guidance questions provided to them are included at Annex II.

⁹ Northern Ireland Act 1998, s.69(1).

¹⁰ UN Human Rights Council Resolution 17/4: <http://www2.ohchr.org/english/bodies/hrcouncil/17session/resolutions.htm>, accessed 31-01-1013.

¹¹ The UN Paris Principles: <http://www2.ohchr.org/english/law/parisprinciples.htm>, accessed 05-02-2013.

¹² UN Guiding Principles, Commentary to Guiding Principle 3. See also the *Berlin Action Plan on Business and Human Rights*, adopted by NHRIs from more than 20 EU countries emphasizing the importance of the efforts of NHRIs to ensure human rights considerations in public procurement and in the commissioning of public services: <http://nhri.ohchr.org/EN/News/Lists/News/Attachments/76/Plan%20of%20Action%20Plan%20FINAL%20BHR%20Workshop-0912-Berlin%20070912.doc>, accessed 31-01-2013.

¹³ Program for Government 2011-2015, Northern Ireland Executive: <http://www.northernireland.gov.uk/pfg-2011-2015-final-report.pdf>, accessed 05-02-2013.

¹⁴ See Chapter 2.3 for further detail.

1.3 Outline of report

The remainder of this report proceeds as follows.

Chapter 2. Public procurement and human rights This chapter explains what is meant by public procurement. It then describes how recent developments in the area of business and human rights have intersected with earlier discussions about whether and if so to what extent public procurement can lawfully be used by government to promote the achievement of social policy goals.

Chapter 3. Legal framework This chapter maps the EU, UK and international legal rules that apply to public procurement in Northern Ireland.

Chapter 4. Public procurement in Northern Ireland: Policy and Practice This chapter identifies the public authorities responsible for public procurement in Northern Ireland, and describes the policy and processes they apply. In turn, it addresses central government, health and social care services, local government (district councils) and procurement connected to excepted and reserved matters.

Chapter 5. Conclusions This chapter sets out recommendations for changes to policy and practice, based on the report's findings.

Public Procurement and Human Rights

2.1 What is Public Procurement?

The Northern Ireland Executive defines public procurement as:

... the process of the acquisition, usually by means of a contractual arrangement after public competition, of goods, services, works and other supplies by the public service.¹⁵

In general legislation and policy materials that deal with public procurement adopt similar definitions. Accordingly, public procurement can be understood as a broad term that encompasses almost all purchasing by the state – which includes government departments and other public authorities, including district councils. It therefore embraces a wide spectrum, from tenders for multi-billion pound infrastructure and urban development, to the commissioning of essential public services from private providers in the areas of health and social care, to the purchase of everyday items such as staff uniforms, stationary and foodstuffs.

In OECD countries, public procurement accounts on average for 12% of GDP and is a substantial component of the overall economy.¹⁶ In Northern Ireland, approximately £11.5 billion is spent each year through public procurement.¹⁷ Here, as elsewhere, public procurement is the single most important source of revenue in some sectors, including health and research-related industries, construction and transportation.¹⁸

Given the large sums of public money at stake, a robust and in some areas complex set of legal rules has been developed around public procurement with the aim of ensuring fairness and accountability with regard to the allocation of public contracts. Exactly which rules need to be followed in a given case will depend on a number of factors, including the monetary value of the contract and the type of good or service being purchased. These rules, as they apply in Northern Ireland, are described in more detail in Chapter 3.

2.1.1 Public Procurement: Legal Principles

Over and above the specific rules that determine how a given purchasing exercise should be conducted, a number of basic legal principles apply to all public procurement.

The first of these is freedom of contract. Under the law of contract, the basic starting point, when two parties make a legal agreement for sale of goods or services, is that persons should be free to buy or sell any goods or services, and to make such agreements with parties of their choosing. This applies also when one of the parties is a public authority.

Importantly, the scope of freedom of contract has always been restricted in various ways in order to promote a range of other public aims. One such aim is free trade and fair competition. Rules made by the World Trade Organisation (WTO) and in the European Union (EU), amongst others, require participating governments to ensure that contracts for provision of goods and services to public authorities are as accessible to companies outside the state as to those inside, in the interest of promoting trade across borders, and preventing protectionism. This approach, by promoting competition between vendors, is also thought to contribute to efficiency in public procurement i.e. cost effectiveness.¹⁹

¹⁵ Glossary of the Northern Ireland Executive: http://www.dsdni.gov.uk/index/hsdiv-housing/ha_guide/hag-glossary.htm, accessed 05-02-2013.

¹⁶ OECD iLibrary: Size of public procurement market: http://www.oecd-ilibrary.org/sites/gov_glance-2011-en/09/01/index.html?contentType=/ns/StatisticalPublication,/ns/Chapter&itemId=/content/chapter/gov_glance-2011-46-en&containerItemId=/content/serial/22214399&accessItemIds=&mimeType=text/html, accessed 10-03-2013.

¹⁷ Department of Finance and Personnel, Collaborative Procurement and Aggregated Demand: http://www.niauditoffice.gov.uk/index/publications/report_archive_home/2012/niao_procurement.pdf.

¹⁸ UN Innovation Briefs: Public Procurement as a tool for promoting more Sustainable Consumption and Production patterns, 2008: http://esa.un.org/marrakechprocess/pdf/InnovationBriefs_no5.pdf.

¹⁹ According to the WTO, open, transparent, and non-discriminatory procurement is the best tool to achieve 'value for money' because this process optimises competition among suppliers. See http://www.wto.org/english/tratop_e/gproc_e/gproc_e.htm.

A further general principle is that public procurement contracts, and the goods and services they relate to, must comply with the general law in the state or states concerned. Of course, the general law is continually evolving, through the adoption of new legislation, integration into domestic law of international rules, and case law, reflecting evolving public interests and needs, in light of a changing environment locally and globally.

Changes in certain areas of the general law will have a high relevance for the conduct of public procurement and design and terms of public procurement contracts. Amongst these are:

- anti-corruption law;
- environmental law;
- health and safety law, and;
- anti-discrimination law.

To this list now needs to be added *human rights*. Chapter 3 describes in greater detail both the international standards and domestic law applying in Northern Ireland that requires all public authorities, and all businesses, to fully respect human rights. It is clear that government and private sector actors have overlapping responsibilities to ensure that human rights are respected in the conduct of public procurement processes, in the terms of public procurement contracts, and throughout the performance of such contracts, i.e. in the production and delivery of the purchased goods and services in question.

2.2 Using Public Procurement to Promote Public Policies

Separate from the need for public procurement to comply with the general law, sometimes public authorities use purchasing to advance particular public policies and their aims.

Such aims can include, for instance, the creation of local employment opportunities, or promoting equal opportunities for groups that have been disadvantaged, such as women, persons with disabilities, or persons from specific ethnic or other minority groups.²⁰ The goals described in the Northern Ireland PfG with regard to the inclusion of social clauses in public procurement contracts lie in these areas.²¹ Another policy aim that is increasingly pursued by governments and public authorities through public procurement is sustainable development, a trend which has given rise to terms such as “green procurement” and “socially responsible public procurement”.

In the past, there was some debate, including in Northern Ireland,²² over how far public authorities could go in including social benefit or sustainability clauses in public procurement contracts, without falling foul of their parallel obligations to ensure fair competition and cost effectiveness. Recently the concept of public “value for money” has been interpreted more broadly, with an eye on the hidden costs to the public (sometimes referred to as “externalities”) that low standards in the areas, for instance, of environmental management, equality, and health and safety, incur. Accordingly, it is now broadly accepted that environmental and social criteria can be taken into account in calculating “cost effectiveness” in public procurement, a position that is clearly reflected in Northern Ireland’s public procurement policy in the definition of “best value for money”.²³

²⁰ C McCrudden, “Using public procurement to achieve social outcomes”, *Natural Resources Forum* 28 (2004) 257–267.

²¹ Northern Ireland Programme for Government 2011–2015, accessible at: <http://www.northernireland.gov.uk/pfg-2011-2015-final-report.pdf>. The Northern Ireland Council for Voluntary Action is currently engaged in work to investigate how lasting impacts can be secured from the use of social clause in public procurement.

²² Committee for Finance and Personnel – Report on the Inquiry into Public Procurement in Northern Ireland, accessible at: http://archive.niassembly.gov.uk/finance/2007mandate/reports/Report_19_08_09R.htm.

²³ Public Procurement Policy Northern Ireland, p.3.

Chapter 4 outlines in more detail the approach taken by public authorities in Northern Ireland in this area. When discussing “public procurement and human rights”, however, it is important to highlight the distinction between the *requirement* that public procurement respects human rights, which is a matter of legal compliance, and the *discretion* that public authorities have to prefer bids that advance public policy aims. For example, as noted above, public authorities are entitled, in evaluating different bids for a given contract, to consider each bid’s contribution to achieving specific public policy goals, even if these go beyond existing legal obligations. However, a public authority would not be obliged to exclude a bid for failing to contribute to a specific goal, if it still scored highly on other factors, such as meeting the main contract requirements, and cost.

By contrast, any bids received by a public authority that did not comply with the law would need to be excluded from evaluation altogether. Thus, if a health trust received a bid for a contract to provide elderly care from a private owner of residential homes who lacked the requisite registrations and licences, the trust would be legally prevented from awarding the contract to that provider. Similarly, if the terms of a private company’s bid for a public contract were such that minimum wage requirements, health and safety, and working hours and leave standards would not be met, the public authority’s acceptance of the bid would be precluded.

It is worth noting that some definitions of terms such as “sustainable procurement” or “socially responsible public procurement” in fact mix up issues such as labour rights and human rights, where public and private sector compliance is a *requirement* as a matter of law, with *discretionary* public policy goals. To illustrate, the European Commission (EC) states that socially responsible public procurement (SRPP) means:

...procurement operations that take into account one or more of the following social considerations: employment opportunities, **decent work, compliance with social and labour rights, social inclusion (including persons with disabilities), equal opportunities, accessibility design for all, taking account of sustainability criteria, including ethical trade issues and wider voluntary compliance with corporate social responsibility (including human rights)**,²⁴ while observing the principles enshrined in the Treaty for the European Union (TFEU) and the Procurement Directives.²⁵

SRPP, the EC continues:

... can be a powerful tool both for advancing sustainable development and for achieving the EU’s (and Member States’) social objectives. SRPP covers a wide spectrum of social considerations, **which may be taken into account** by contracting authorities at the appropriate stage of the procurement procedure. Social considerations can be combined with green considerations in an integrated approach to sustainability in public procurement.²⁶

²⁴ The EC has included human rights and ILO Core Labour Standards under the CSR heading. European Commission, *Evaluation Report Impact and Effectiveness of EU Public Procurement Legislation*, 2011, p. 80: http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/evaluation-report_en.pdf, accessed 19-03-2013.

²⁵ *Ibid.*, and European Commission, *Buying social: A Guide to Taking Account of Social Consideration in Public Procurement*, 2010: <http://ec.europa.eu/social/BlobServlet?docId=6457&langId=en>, accessed 19-03-2013.

²⁶ European Commission, *Evaluation Report Impact and Effectiveness of EU Public Procurement Legislation* (2011), p.82, emphasis added.

However, as already noted, section 6 of the HRA, and the UNGPs, which have been strongly endorsed by the UK government, together make clear that failing to respect human rights is unlawful under domestic law for public authorities, and that public procurement practice is included in the scope of this obligation.

When viewed in Northern Ireland, it is clear that the statements above of the EC must be interpreted to reflect the difference between discretionary actions and obligations. Public authorities do have discretion over the weight they attach to social goals such as sustainability, and voluntary CSR measures, in evaluating bids for public contracts. However, this is not so in relation to human rights, equal opportunities, health and safety standards and other matters where binding standards are addressed to public authorities and businesses by law. How procurement policy and practice in Northern Ireland can be strengthened in line with this position is addressed in Chapters 4 and 5.

2.3 Supply Chain Management in the Private Sector

There are both similarities and differences in the legal rules and processes that apply to procurement in the public and private sectors. Frequently, private companies will run a tender process – along roughly similar lines to those followed by public authorities – in the interests of identifying the best supplier for the contract in terms of cost effectiveness. In general, though, private businesses have greater discretion over how they design tender requirements, evaluate bids and select contractors, albeit they are subject to the overarching requirement of legality, and are also therefore obliged to meet applicable environmental, anti-corruption and equal treatment standards, for example.

Principle 13 of the UNGPs highlights business relationships and that enterprises should “[s]eek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts”.²⁷ The responsibility to respect human rights extends throughout a company’s supply chain, including all subcontractors and suppliers. Depending on the circumstances, this responsibility may extend all the way back through the chain of production to raw materials.²⁸

Consequently, and following from increasing pressure from consumers, investors, trade unions and local communities, as well as legislation in some cases,²⁹ many companies have taken new measures to address human rights abuses in their supply chains.³⁰

Sometimes, as part of efforts to ensure human rights protection in their supply chains, companies may rely on independent social compliance, audit or certification initiatives for certain products or sectors, for example, for clothing, coffee, cocoa, timber, or diamonds. When a supplier of relevant goods or services is approved by or participates in such initiatives, this can provide the purchasing company with evidence that the supplier’s operations do not generally abuse human rights or, if abuses do occur, that the supplier has a commitment to address them.

²⁷ http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf, accessed 19-03-2013.

²⁸ The OECD Guidelines for Multinational Enterprises also require companies: “To avoid causing or contributing to adverse impacts on matters covered by the Guidelines through their own activities includes their activities in the supply chain”, page 24: <http://www.oecd.org/daf/inv/mne/48004323.pdf>, accessed 19-03-2013.

²⁹ See e.g. Dodd Frank Wall Street and Consumer Protection Act: <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>.

³⁰ For a list of sector specific initiatives on supply chain sustainability see: <http://supply-chain.unglobalcompact.org/>.

Given that responsibility to ensure that human rights are not abused in supply chains likewise applies to public authorities, social compliance initiatives can also be useful in the context of public procurement. While they may not always have the same breadth of discretion as businesses to *require* participation in specific initiatives as part of tender specifications, nevertheless public authorities can highlight such initiatives as one way for suppliers to demonstrate their respect for human rights.

Further, the experiences of businesses in supply chain management can provide valuable lessons to public authorities when integrating measures to support human rights compliance into procurement policies and practices. For example, in certain sectors, groups of businesses who rely on the same suppliers have collaborated to identify root causes for persisting human rights abuses and to find sustainable solutions for these.³¹ In spite of the acknowledged differences between private and public procurement, this report treats private sector supply chain management approaches on human rights as relevant to any consideration of public procurement.

³¹ See for instance, the Business Social Compliance Initiative: <http://www.bsci-intl.org/about-bsci>.

Legal Framework

3.3 European Union Law

3.1.1 EU Procurement Law

A key aim of the EU is the free movement of goods, services, capital and people within EU boundaries.³² EU membership therefore entails various obligations for governments, in order to guarantee these “four freedoms” in practice. At the same time, the Court of Justice of the European Union (CJEU) has held that member states may restrict cross-border flows in these four areas, so long as restrictions are imposed in pursuit of the public interest and meet certain other conditions, such as equal treatment, transparency and proportionality.³³ If restrictions by member states fail to meet these conditions, or they otherwise fail to guarantee free movement, they can be held legally accountable and may incur penalties, such as a requirement to pay damages.

The criteria that are applied by public authorities when they set terms for the provision of goods and services, and when they select bidders for contracts, must be in line with the conditions specified by EU law. This is to avoid, for instance, public authorities in one state setting procurement terms that unduly favour businesses registered there, at the expense of providers in other EU states, undermining fair competition within the EU to which member states have committed.

There are two main sources of EU rules on public procurement:³⁴

- Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts;
- Directive 2004/17/EC on coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

These Directives require public authorities to apply certain rules to all procurement in the categories mentioned over a certain money value.³⁵ To comply with the Directives, public authorities need, for instance, to advertise contracts so that the opportunity to compete for them is equally accessible to relevant businesses across the EU. Public authorities must also ensure that the proposed contract terms do not in themselves unduly impede free movements, or breach EU law, including anti-discrimination law.³⁶

Such conditions apply to all parts of public procurement contracts, including environment, sustainability and social benefit clauses. Previously, as noted in Chapter 2, there was discussion over the extent to which public authorities could, compatibly with EU law, select amongst bids for public contracts on the basis of “non-economic” criteria, as social and environmental criteria are described. Decisions of the CJEU, however, have since held that states may utilize selective tendering linked to the subject-matter of the contract.³⁷

³² EU Internal Market: http://europa.eu/legislation_summaries/internal_market/index_en.htm.

³³ Case 2/74 *Reyners v. Belgium*, 1974 ECR 631, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61974J0002:EN:HTML>, accessed 19-03-2013.

³⁴ The Directives do not apply to certain defence and security-related contracts, which are covered by Directive 2009/81/EC.

³⁵ Public sector contracting authorities are subject to the general principles of the EU Treaty even if a particular procurement falls outside the Directives: UK Cabinet Office Public Procurement Policy, accessible at <http://procurement.cabinetoffice.gov.uk/policy-capability/latest-policy-and-regulations/public-procurement-policy>, Accessed 15-03-2013.

³⁶ Directive 2000/78/EC prohibits discrimination on grounds of religion or faith, age, handicap and sexual orientation in the employment field; Directive 76/207/EEC prohibits discrimination in the employment field on grounds of gender.

³⁷ See e.g. *Finnish Bus Case/Concordia Bus Finland* (Case C-513/99 *Concordia Bus Finland Oy Ab v Helsingin kaupunki og HKL-Bussliikenne* [2002] ECR I-7213.) and the *Ruffert* case (Case C-346/06 [2008] ECR I-0000 nyr.). Both cases concerned the scope for public authorities, when awarding contracts, to require tenderers to commit to national goals and legislation. The cases concerned environmental considerations, and labour rights, respectively.

Human rights are as much a part of the fabric of EU law as free movement of goods, services, capital and people.³⁸ Consistently with this, Article 6 of Directive 2004/18/EC, concerning permissible restrictions that governments can in general apply to public procurement, provides that:

[n]othing in this Directive should prevent the imposition or enforcement of measures necessary to protect public policy, public morality, public security, health, human and animal life or the preservation of plant life, in particular with a view to sustainable development, provided that these measures are in conformity with the Treaty.³⁹

It should be mentioned that the EC initiated a review of the EU Procurement Directives. A green paper on the modernisation of public procurement legislation was issued in January 2011,⁴⁰ followed in December 2011 by proposals for revised Directives on public procurement and a draft directive on the award of concession contracts.⁴¹ The EU Commission has also developed proposals on the access of suppliers from “third countries” to the EU public procurement market.⁴² The European Group of National Human Rights Institutions’ response to the green paper contained recommendations to ensure that public procurement policy and practice in the EU are fully aligned with the regional and international human rights obligations of member states.⁴³ A draft directive was published in July 2013 which contains provisions pertaining to the “better integration of social and environmental considerations into the procurement process”.⁴⁴ However, it makes limited reference to human rights obligations.

3.1.2 EU Equal Treatment Law

In addition to the prohibition of discrimination under the European Convention on Human Rights (ECHR) to which, as mentioned earlier, the EU will accede, EU law establishes requirements of equal treatment in various ways. Non-discrimination on grounds of nationality is a cornerstone of the EU legal order. Art.13 EC Treaty, introduced by the Treaty of Amsterdam,⁴⁵ specifically empowers the Community to combat discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation. Through instruments including the Racial Equality Directive⁴⁶ and the Employment Equality Directive,⁴⁷ related obligations for Member States and their public authorities are established.

Art.21 of the European Charter of Fundamental Rights (ECFR) further prohibits discrimination based on grounds such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation, and based on nationality, within the scope of EU law.⁴⁸

³⁸ Accession of the EU to the ECHR became a legal obligation under the Treaty of Lisbon, Art.6 and is foreseen by Art.59 of the ECHR as amended by Protocol 14. On 17 March 2010, the Commission proposed negotiation of Directives for the EU’s accession to the ECHR (IP/10/291).

³⁹ Text of the Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:en:NOT>.

⁴⁰ EU Green Paper – Modernising Public Procurement: http://ec.europa.eu/internal_market/publicprocurement/modernising_rules/conferences/index_en.htm.

⁴¹ EU website on the modernisation of procurement directives: http://ec.europa.eu/internal_market/publicprocurement/modernising_rules/reform_proposals_en.htm.

⁴² <http://trade.ec.europa.eu/doclib/press/index.cfm?id=788>, Accessed 13-03-2013.

⁴³ European Group of NHRIs, European Union Members, Consultation response, April 2011: http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/701_ecprocurement2011_701_ecprocurement2011_en.pdf.

⁴⁴ Proposal for a Directive of the European Parliament and of the Council on public procurement, 12 July 2013, p. 57, para. 41.

⁴⁵ Treaty of the EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:321E:0001:0331:EN:PDF>.

⁴⁶ The Racial Equality Directive 2000/43/EC prohibits discrimination ‘on grounds of race or ethnic origin’ in employment, education and social protection, including social security and healthcare and in access to and the supply of goods and services including housing: 2000/43/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>.

⁴⁷ The Employment Equality Directive prohibits direct and indirect discrimination as well as harassment on the grounds of religion or belief, disability, age, and sexual orientation: 2000/78/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>, accessed 17-03-2013.

⁴⁸ European Charter of Fundamental Rights: http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

In the conduct of public procurement, public authorities within EU member states need to respect these standards, as well as those relating explicitly to public procurement.

3.3 Domestic Law

3.2.1 Procurement

Two sets of regulations implement the EU procurement Directives in England, Wales and Northern Ireland:⁴⁹

- The Public Contracts Regulations 2006, which implement the EU rules relating to services, supplies or works procurements entered into by public bodies;
- The Utilities Contracts Regulations 2006, which implement the EU rules relating to services, supplies or works procurements entered into by utilities.

According to the Public Contracts Regulations of 2006, procurements are divided into Part A services and Part B services. Only Part A procurements are fully caught by the Regulations, while Part B services are subject to a less stringent regime, with only a few of the Regulations' detailed rules in play. Part B procurements are those considered by the EU to be in general of interest only to bidders located in the Member State where the contract will be performed.⁵⁰

The EC annually sets threshold cost levels for Part A and B services, depending on the type of service.⁵¹ When procuring above the EU thresholds, contracting authorities should advertise the contract in the EU's Official Journal and follow the various other procedural rules laid out in the Regulations for the procurement category in question. For services below the financial threshold, or Part B services, contracting authorities are relieved of specific requirements, but are nevertheless required to adopt a procurement process that meets the general requirements of non-discrimination, equal treatment, transparency, proportionality and mutual recognition.

The Freedom of Information Act 2000 (FOIA) is also potentially relevant in the context of public procurement, as it may allow an unsuccessful tenderer or others with an interest, as defined by the Act, to access information about a procurement process.⁵²

Other UK regulations that do not apply in Northern Ireland will impact on the procurement connected to some excepted and reserved matters.⁵³ The Public Services (Social Value) Act 2012 in England and Wales, for example, requires public authorities to have regard to economic, social and environmental well-being in connection with public services contracts. This Act only applies to public services contracts, not works or supplies contracts. According to section 1, the authority must consider how the procured service could improve the economic, social and environmental wellbeing of the relevant area and how in the process of the procurement it might act with a view to securing that improvement. Contracting authorities do however remain fully subject to the EU rules, in particular the principles of equal treatment and non-discrimination between tenderers.⁵⁴

⁴⁹ Similar but separate regulations apply to Scotland.

⁵⁰ A full overview of part A and B services can be found in Schedule 3 of the Public Contracts Regulations of 2006: <http://www.legislation.gov.uk/uksi/2006/5/schedule/3/made>. Further details on the different types of procurements can be found in the OGC guidance document developed for the UK Cabinet Office: [http://webarchive.nationalarchives.gov.uk/20110601212617/http://ogc.gov.uk/documents/Remedies_Guidance_Part_1_introduction\(1\).pdf](http://webarchive.nationalarchives.gov.uk/20110601212617/http://ogc.gov.uk/documents/Remedies_Guidance_Part_1_introduction(1).pdf), Accessed 13-03-2013.

⁵¹ For a complete overview of current thresholds see: http://procurement.cabinetoffice.gov.uk/sites/default/files/files/GP_content/Public_procurement_policy/New%20Threshold%20Levels%20for%202012%20%26%20changes%20in%20the%20use%20of%20the%20Accelerated%20Restricted%20Procedure%2010_11.pdf.

⁵² The Freedom of Information Act 2000: <http://www.legislation.gov.uk/ukpga/2000/36/contents>.

⁵³ Overview of UK Public Procurement regulations. http://procurement.cabinetoffice.gov.uk/sites/default/files/files/GP_content/Public_procurement_policy/UK%20Regulations.pdf, accessed 13-03-2013.

⁵⁴ The Public Services (Social Value) Act 2012 : <http://www.legislation.gov.uk/ukpga/2012/3/enacted>.

3.2.2 Equal Treatment

In line with obligations under international human rights law (see section 3.3) and EU law (see section 3.1.2), a range of statutory rules in force in Northern Ireland give effect to rights to non-discrimination, equality of opportunity and equal treatment.

Equality legislation Northern Ireland	Equal Pay Act (Northern Ireland) 1970
	Sex Discrimination (Northern Ireland) Order 1976
	Disability Discrimination Act 1995
	Race Relations (Northern Ireland) Order 1997
	Fair Employment and Treatment (Northern Ireland) Order 1999
	Northern Ireland Act 1998
	Equality (Disability, etc.) (Northern Ireland) Order 2000
	Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003
	Special Educational Needs and Disability (Northern Ireland) Order 2005
	Disability Discrimination (Northern Ireland) Order 2006
	Employment Equality (Age) Regulations (Northern Ireland) 2006
	The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006

Source: Equality Commission for Northern Ireland⁵⁵

Section 75 of the Northern Ireland Act 1998 provides that:

- (1) A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity-
 - (a) between persons of different religious beliefs, political opinion, racial group, age, marital status or sexual orientation;
 - (b) between men and women generally;
 - (c) between persons with a disability and persons without; and
 - (d) between persons with dependants and persons without.⁵⁶

Section 75 further defines the duties on public authorities in Northern Ireland connected to ensuring equality of opportunity when carrying out their functions. All public bodies are required to develop an equalities plan and an assessment in connection with the start-up of any new projects or initiatives based on a screening and assessment of potential impacts.⁵⁷

⁵⁵ Equality Commission for Northern Ireland Website: http://www.equalityni.org/sections/default.asp?cms=your%20rights_equality%20law&cmsid=2_525id=52&secid=2.

⁵⁶ Northern Ireland Act 1998, s.75, accessible at: <http://www.legislation.gov.uk/ukpga/1998/47/section/75>.

⁵⁷ Equality Commission for Northern Ireland, *Guide to the Statutory Duties. Obligations placed on public authorities to meet the statutory duties in Section 75 of the Northern Ireland Act 1998*, <http://www.equalityni.org/archive/pdf/GuidetoStatutoryDuties0205.pdf>.

3.2.3 Human Rights

The HRA 1998 gives legal effect in the UK to the majority of human rights contained in the ECHR. Under section 6 HRA 1998, it is unlawful for any public authority to act in a way that is incompatible with ECHR rights.⁵⁸ Under section 3 HRA 1998, UK legislation must be interpreted and applied compatibly with human rights so far as possible. Section 7 HRA 1998 establishes the right to take legal action for breaches of human rights in line with the Act. Section 8 provides for the award of a remedy where any breach is determined by a court to have taken place.

Section 6 HRA 1998 applies to all activities of a public authority. In principle, therefore, it includes public procurement by central or local government, whether of goods or services, and thus public services delivered by private providers, for instance, in the area of health and social care, security, and management of prisons and detention facilities related to asylum and immigration. Yet how the HRA 1998's protection for human rights is preserved, in practice, when public authorities contract out the delivery of public services, has been a problematic question and, at least for some types of public services, remains unclear.

The reasons for this, in summary, are as follows. When the HRA passed through Parliament, it was clearly intended that its protection should extend to privatised public service delivery.⁵⁹ The Act was designed to achieve this outcome through the inclusion of section 6(3)(b). This section provides that "...any person certain of whose functions are of a public nature..." qualifies as a "public authority" for the purposes of the Act and is therefore potentially liable for acting incompatibly with ECHR rights. Accordingly, any private sector or voluntary sector organisation undertaking a function, or functions, "of a public nature" would be under a direct obligation to respect human rights, parallel to those of the commissioning public authority. Correspondingly, any person whose human rights were breached by a private or voluntary provider of a public service would be able to challenge that by taking legal action directly against the provider, rather than being restricted, in seeking redress, to challenging the purchasing public authority.

Controversially, however, since the HRA 1998 entered into force, the courts have tended to interpret section 6 narrowly. Instead of looking only at whether a public function is being performed, as Parliament intended, the courts have weighed in balance a range of other factors when deciding whether or not to apply section 6 to private or voluntary bodies under contract to deliver public services. Thus, in the leading case on the point, the House of Lords took the view that the supply of residential care places was not a "public function", even when funded by a local authority, with the consequence that HRA 1998 did not apply to the private provider in question.⁶⁰

This approach has been subject to strong and widespread criticism, from the Joint Committee on Human Rights, amongst others, for inconsistency with Parliament's intention in enacting the HRA 1998, and for

⁵⁸ Section 6(3)(b) HRA 1998.

⁵⁹ See Joint Committee on Human Rights, *The Meaning of Public Authority under the Human Rights Act*, Ninth Report of Session 2006-7; <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/77/77.pdf>.

⁶⁰ *YL v Birmingham City Council* [2007] UKHL 27.

diminishing the scope of protection it offers, particularly to vulnerable rights-holders. During the House of Lords Debate on the Bill that became the HRA, the Lord Chancellor informed of the nature of section 6:

It provides that “public authority” ‘includes, any person certain of whose functions are functions of a public nature.’ That provision is there to include bodies which are not manifestly public authorities, but some of whose functions only are of a public nature. It is relevant to cases where the courts are not sure whether they are looking at a public authority in the full-blooded Clause 6(1) sense with regard to those bodies which fall into the grey area between public and private. The Bill reflects the decision to include as “public authorities” bodies which have some public functions and some private functions.⁶¹

In response to the judicial decision cited above, the government passed legislation explicitly categorising the provision of publicly-funded residential care as a public function subject to section 6 HRA 1998.⁶²

For other privately-delivered public services, outside the scope of this specific legislative measure, it may be that, on the basis of the courts’ current approach, the actionable duty under section 6 HRA 1998 sits with the purchasing public authorities alone. As has been observed by the Joint Committee on Human Rights, this entails a heavy onus on public authorities, and especially those responsible for procurement, to take appropriate measures to ensure human rights compliance by contractors. Such measures will include developing and actively disseminating accessible guidance “...to ensure that all public authorities and relevant contractors understand the scope of their duties under the HRA”.⁶³ Delivering on these measures would also involve, for instance, producing template contracts, checklists and other tools for commissioning authorities to address specific service areas.

In the absence of such measures, substantial gaps in human rights protection remain, which are resulting in widespread and serious human rights abuses for users of privately delivered public services, particularly persons in groups at risk of vulnerability and exclusion, including older people, persons with disabilities, children, asylum seekers and refugees.⁶⁴

The importance of paying heightened attention to these matters is reflected in the work of the three NHRIs in the UK. In Scotland, the Scottish Executive, with support from the Scottish Human Rights Commission, has taken steps to start addressing these gaps.⁶⁵ The UK Equality and Human Rights Commission have also made recommendations for changes in regulation and procurement arrangements for health and social care and have published guidance for local authorities on human rights obligations when commissioning home care services.⁶⁶ The investigation report of the NIHRC into the treatment of older people in nursing homes included a recommendation that human rights should be integrated into the procurement and commissioning of services in nursing home care.⁶⁷

⁶¹ HL Deb, 24 November 1997, Col 811.

⁶² Health and Social Care Act 2008, s.145.

⁶³ The Joint Committee on Human Rights has strongly criticised a lack of adequate guidance on mainstreaming human rights into public procurement and lack of support for implementation of that guidance which has been produced from responsible UK central government bodies: *supra* n.56, paras.24-61, and Joint Committee on Human Rights, *Any of our business? Human rights and the UK private sector*, First Report of Session 2009-10, Vol.1, HL Paper 5-I, HC64-I, paras.132-150.

⁶⁴ See e.g. Joint Committee on Human Rights, *The Human Rights of Older People in Healthcare*, Eighteenth Report of Session 2006-7, HL Paper 156_I, HC 378-I.

⁶⁵ Scottish Government: *Procurement of care and support services*, September 2010. <http://www.scotland.gov.uk/Publications/2010/09/21100130/0>, accessed 13-03-2013.

⁶⁶ EHRC, *Close to home: An inquiry into older people and human rights in home care*. <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-home-care-of-older-people/close-to-home-report/>, accessed 13-03-2013. EHRC, *Guidance on human rights for commissioners of home care*. <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-home-care-of-older-people/guidance-on-human-rights-for-commissioners-of-home-care/> accessed 03-10-2013.

⁶⁷ NIHRC, *In Defence of Dignity: The Human Rights of Older People in Nursing Homes*: <http://www.nihrc.org/documents/research-and-investigations/older-people/in-defence-of-dignity-investigation-report-March-2012.pdf>.

Arrangements in Northern Ireland in relation to these issues are considered in more detail in Chapter 4.

3.3 International Human Rights Law

The UK is formally committed to a range of international human rights instruments in addition to the ECHR. The Northern Ireland Act 1998 makes provision to ensure that Northern Ireland public authorities act compatibly with the UK's international obligations and with ECHR rights and European Community law, in particular.⁶⁸

	Signature	Ratification
International Covenant on Economic, Social and Cultural Rights	16 Sep 1968	20 May 1976
International Covenant on Civil and Political Rights	16 Sep 1968	20 May 1976
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	31 Mar 1999	10 Dec 1999
International Convention on the Elimination of All Forms of Racial Discrimination	11 Oct 1966	7 Mar 1969
Convention on the Elimination of All Forms of Discrimination against Women	22 Jul 1981	7 Apr 1986
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	26 Nov 1987	24 Jun 1988
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	15 Mar 1985	8 Dec 1988
Convention on the Rights of the Child	19 Apr 1990	16 Dec 1991
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts	7 Sep 2000	24 Jun 2003
Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour		22 Mar 2000
Freedom of Association and Protection of the Right to Organise Convention		27 Jun 1949
Right to Organise and Collective Bargaining Convention		30 Jun 1950
Convention concerning Forced or Compulsory Labour		3 Jun 1931
Equal Remuneration Convention		15 Jun 1971
Abolition of Forced Labour Convention		30 Dec 1957
Discrimination (Employment and Occupation) Convention		8 Jun 1999
Employment Policy Convention		27 Jun 1966
[European] Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)	4 Nov 1950	8 Mar 1951

Source: UK Foreign & Commonwealth Office⁶⁹

⁶⁸ Northern Ireland Act 1998, ss.24, 26, accessible at <http://www.legislation.gov.uk/ukpga/1998/47/contents>.

⁶⁹ UK Foreign & Commonwealth Office, <https://www.gov.uk/uk-treaties#lists-of-treaties> accessed as web archive 03-10-2013.

International human rights law imposes on states a general obligation to secure enjoyment of the human rights, which extends to “positive obligations”. This means that the state’s duty to guarantee effective enjoyment of human rights goes beyond ensuring that the government itself respects rights. Rather, the state must also take reasonable measures to prevent human rights abuses by third parties, including private sector actors, for example, by enacting laws and securing their effective enforcement, through education, information, monitoring and, where necessary, the deployment of sanctions.⁷⁰

With regard to socio-economic rights, the nature of the state’s duties under international human rights law are slightly different. It is recognised that the state may need to balance competing considerations in the course of development, leading, amongst others, to the principle of progressive realisation of economic, social and cultural rights to the maximum of available resources.⁷¹ Nonetheless, a minimum core obligation must be guaranteed, satisfying “at the very least, minimum essential levels” of these rights.⁷² For example, the minimum core obligations emanating from the right to health include, inter alia, a duty to ensure access: to health facilities, goods and services on a non-discriminatory basis; to minimum essential food, and to basic shelter, housing and sanitation. Government must further ensure equitable distribution of all health facilities, goods and services, provide essential drugs, and adopt and implement a national public health strategy and plan of action⁷³

On this basis, it is clear that public authorities in Northern Ireland have discretion over the approach they take to progressively realising economic and social rights through social benefit clauses. By contrast, public authorities do not have discretion over whether or not they take reasonable steps to prevent human rights abuses associated with public procurement. The latter therefore provides the main focus of this report and its recommendations.

3.3.1 UN Guiding Principles on Business and Human Rights

Drawing from these treaties, the UNGPs were unanimously endorsed by the UN Human Rights Council in 2011.⁷⁴ The UNGPs have been strongly and regularly supported in public statements by the UK government.⁷⁵ The UK government published a national action plan for implementation of the Guiding Principles in September 2013, which includes the following commitment:

...to ensuring that in UK Government procurement human rights related matters are reflected appropriately when purchasing goods, works and services. Under the public procurement rules public bodies may exclude tenderers from bidding for a contract opportunity in certain circumstances, including where there is information showing grave

⁷⁰ See further, General Comment by the UN Committee on the Rights of the Child Regarding Child Rights and the Business Sector: http://www2.ohchr.org/english/bodies/crc/docs/Draftone_CRCGC_ChildRightsandBusinessSector.doc, and Statement on the obligations of States Parties regarding the corporate sector and economic, social and cultural rights, Committee on Economic, Social and Cultural Rights. Forty-sixth session, Geneva, 2-20 May 2011; Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, State responsibilities to regulate and adjudicate corporate activities under the United Nations core human rights treaties: an overview of treaty body commentaries: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/108/52/PDF/G0710852.pdf?OpenElement>.

⁷¹ UN Committee on Economic, Social and Cultural Rights, *General Comment 3: The nature of states parties obligations (Art. 2, par.1)*, 14-12-1990; accessible at: <http://www.unhcr.ch/tbs/doc.nsf/0/94bdbaf59b43a424c12563ed0052b664>.

⁷² Ibid.

⁷³ For the complete list of minimum core obligations under the right to health, see UN Committee on Economic, Social and Cultural Rights, *General Comment 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, 11 August 2000, E/C.12/2000/4, accessible at: <http://www.refworld.org/docid/4538838d0.html>.

⁷⁴ UN Guiding Principles on Business and Human Rights – Implementing the Protect, Respect, Remedy Framework, A/HRC/17/31: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

A/HRC/RES/17/4: Human rights and transnational corporations and other business enterprises: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/17/4.

⁷⁵ See e.g. <https://www.gov.uk/government/speeches/a-uk-vision-for-business-and-human-rights>.

misconduct by a company in the course of its business or profession. Such misconduct might arise in cases where there are breaches of human rights. In addition, UK public bodies are required to have due regard for equality-related issues in their procurement activity.⁷⁶

The standards contained in the UNGPs are structured according to the framework of the following three “pillars”:

- The state duty to protect against business-related abuses of human rights;
- The corporate responsibility to respect human rights, and
- Access to remedy for victims of business-related abuses.

Pillar I: The state duty to protect human rights

Under Pillar I of the UNGPs states need to take effective action to prevent human rights abuses, by public and social actors, including businesses, by taking “...all necessary steps to protect against such abuse, including to prevent, investigate, and punish the abuse, and to provide access to redress”.⁷⁷ In the business context this includes ensuring an adequate overall regulatory framework for business activities, across all sectors; ensuring human rights are duly accounted and given effect to in all areas of government law and policy-making, domestically and internationally, that may affect business activities; and providing guidance and information to businesses on how to respect human rights.⁷⁸

The UNGPs afford special attention to the state’s role when it acts as a commercial actor. Under the heading, “the state-business nexus”, Guiding Principle 6 states:

States should promote respect for human rights by business enterprises with which they conduct commercial transactions.⁷⁹

The *Commentary* to Principle 6 elaborates:

States conduct a variety of commercial transactions with business enterprises, not least through their procurement activities. This provides States – individually and collectively – with unique opportunities to promote awareness of and respect for human rights by those enterprises, including through the terms of contracts, with due regard to States’ relevant obligations under national and international law.⁸⁰

Contracting out of public services is also specifically addressed by the UNGPs. Guiding Principle 5 provides:

States should exercise adequate oversight in order to meet their international human rights obligations when they contract with or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.⁸¹

⁷⁶ UK Foreign & Commonwealth Office, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights*, accessible at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf.

⁷⁷ A/HRC/17/31, Principle 1, p.3.

⁷⁸ UN Doc. A/HRC/17/31, Principle 4, pp.6-7.

⁷⁹ UN Doc. A/HRC/17/31, Principle 6, p.8.

⁸⁰ *Ibid.*

⁸¹ UN Doc. A/HRC/17/31, Principle 5, p.8.

The Commentary continues:

States do not relinquish their international human rights obligations when they privatise the delivery of services that may impact upon the enjoyment of human rights. Failure by a State to ensure that business enterprises performing such services operate in a manner consistent with the State's human rights obligations may entail... legal consequences for the state itself. As a necessary step, the relevant service contracts or enabling legislation should clarify the State's expectations that these enterprises respect human rights. States should ensure that they can effectively oversee the enterprises' activities, including through the provision of adequate independent monitoring and accountability mechanisms.⁸²

The UK national action plan for the implementation of the UNGPs pledges to reinforce the implementation of its commitments under Pillar I, including by:

[reviewing] the degree to which the activities of **UK State-owned, controlled or supported enterprises**, and of State contracting and purchasing of goods and services, are executed with respect for human rights, and make recommendations to ensure compliance with the UNGPs.⁸³

Pillar II: The corporate duty to respect human rights

Turning to Pillar II the onus is on businesses to avoid infringing on human rights and to address any adverse human rights impacts with which a business might be involved.⁸⁴

Avoiding infringements of human rights, according to the UNGPs, means that businesses must prevent or mitigate any adverse impacts on human rights owing to the business' own activities or which may be directly linked to its operations, products or services through business relationships.⁸⁵ In terms of scope, the UNGPs state clearly that Pillar II's responsibilities apply to all businesses, irrespective, for instance, of their size or operating location. The responsibility to respect extends to all internationally recognised human rights.⁸⁶

Fulfilling this responsibility may, at first glance, seem difficult. The potential scope of human rights abuses to which businesses can be connected is vast and account must be taken of the length and complexity of globalised supply chains.

To address this challenge, the UNGPs introduce the concept of "human rights due diligence". This is a process to identify, prevent, mitigate and account for human rights impacts.⁸⁷ While the responsibility to respect applies equally to all businesses, large or small, the UNGPs state that the scale and complexity of a business' human rights due diligence effort "...may vary according to [its size, sector, operational context, ownership and structure]",⁸⁸ as well as with the severity of the business's actual or potential impacts on human rights. An extensive range of guidance materials now exists to demonstrate to businesses, in practical terms, how to perform human rights due diligence. Such guidance can be found to address, for example, small and medium sized enterprises, and businesses in specific sectors and operating contexts.⁸⁹

⁸² Ibid.

⁸³ UK Foreign & Commonwealth Office, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights*.

⁸⁴ UN Doc. A/HRC/17/31, Principle 11, p.13.

⁸⁵ UN Doc. A/HRC/17/31, Principle 13, p.14.

⁸⁶ UN Doc. A/HRC/17/31, Principles 14, p.14 and 12, p.13.

⁸⁷ UN Doc. A/HRC/17/31, Principle 15, p.15.

⁸⁸ UN Doc. A/HRC/17/31, Principle 14, p.14.

⁸⁹ See e.g. <http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/>.

It is important to note, in connection with Pillar II, potential implications concerning the application of section 6 HRA 1998 to privatised public services. While the UNGPs may not change the position, for the moment, in domestic law (see section 3.2.1), the arrival of a clear statement of the corporate responsibility to respect human rights does nevertheless constitute an important development. Pillar II has potential implications for discussion concerning the application of section 6 HRA 1998 to privatised public services.

First, Pillar II of the UNGPs suggests that private and third sector organisations have a responsibility to respect human rights, and to undertake due diligence, regardless of whether they are selling their services to public or other private actors.⁹⁰ Therefore, the argument that the establishment of a direct duty under section 6 HRA 1998 on private and third sector service providers to respect human rights carries a risk of market flight, is substantially weakened.

Second, on a narrow view of section 6(3)(b) HRA 1998, public authorities are faced with the unrealistic task of defining, in advance, contract terms that can anticipate all possible human rights issues arising from the performance of a public service contract. Taking the approach of Pillar II of the UNGPs, by contrast, allows for a procedural approach. On this basis, a purchasing authority can include terms to require a service provider to undertake its own human rights due diligence measures, in order to identify, and counter, risks of negative impacts on human rights of service users or others on a continuing basis, and to the extent warranted by the nature of the service in question.

The UK national action plan for the implementation of the UNGPs states that:

[t]he Government supports the approach set out in the UNGPs, and is determined to help companies implement it. This should be at the heart of a company's core operations; it is not the same as philanthropy or social investment.⁹¹

The national action plan further notes that:

[t]he responsibility of businesses to respect human rights exists independently of States' abilities and/or willingness to fulfil their own human rights obligations.⁹²

⁹⁰ The Joint Committee on Human Rights has in any case found no evidential basis for the alleged risk of market flight of private and third sector actors from public service contracts on grounds of human rights responsibilities arising under s.6 HRA 1998.

⁹¹ UK Foreign & Commonwealth Office, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights*.

⁹² *Ibid.*

Public Procurement in Northern Ireland: Policy and Practice

4.1 Government Departments

4.1.1 Responsible Bodies

The lead department for public procurement in the Northern Ireland Executive is the Department of Finance and Personnel. The Minister chairs a Procurement Board, which was established in 2002 following an extensive review of public procurement.⁹³ The Procurement Board develops overall public procurement policy and strategy. The Board's members are the Permanent Secretaries of the twelve government Departments,⁹⁴ the Treasury Officer of Accounts, the Director of the CPD and two external experts, with a representative of the Strategic Investment Board Ltd. attending as an observer.

The CPD is situated within the Department of Finance and Personnel. It has two functions in two main areas: first, supporting the Procurement Board, especially in the development of public procurement policy, monitoring its implementation, and producing guidance on best practices; and second, providing procurement services to the rest of the public sector.

Sharing these functions with CPD are seven Centres of Procurement Expertise (CoPEs) spread across government departments and arms length bodies.⁹⁵ CoPEs are established after third-party accreditation to assure the quality of their procurement practice. Representatives of the CPD and CoPEs form a Procurement Practitioners Group (PPG) that meets regularly to discuss and draft policy for approval by the Board and address operational issues. The PPG also disseminates guidance and information on best practice. Each CoPE is required to have a procedure to enable formal investigation of complaints.⁹⁶

The Northern Ireland Assembly Committee for Finance and Personnel also influences public procurement policy and practice through its scrutiny, policy development and consultation role with respect to the work of the Department of Finance and Personnel. In 2009 the Committee conducted an inquiry into public procurement that made a number of recommendations, such as those on maximising social benefit and improving policy and processes, which continue to influence the debate on how best to pursue socially responsible public procurement.⁹⁷

⁹³ Department of Finance and Personnel, Northern Ireland Procurement Policy and Northern Ireland Procurement Policy Handbook, accessible at: http://www.dfpni.gov.uk/pdf-annexec_rev.pdf.

⁹⁴ Department of Agriculture and Rural Development (DARD), Department of Culture Arts and Leisure (DCAL), Department of Education (DE), Department for Employment and Learning (DEL), Department of Enterprise, Trade and Investment (DETI), Department of the Environment (DOE), Department of Finance and Personnel (DFP), Department of Health, Social Services and Public Safety (DHSSPS), Department of Justice (DOJ), Department for Regional Development (DRD), Department for Social Development (DSD) and Office of the First Minister and Deputy First Minister (OFMDFM): <http://www.nidirect.gov.uk/northern-ireland-government-departments>.

⁹⁵ CoPes are located in the Roads Service, Northern Ireland Water, Translink, Health Estates, Procurement and Logistics Service, Business Support Organisation, Education and Library Boards and Northern Ireland Housing Executive.

⁹⁶ This does not apply to appeals by tenderers who are dissatisfied with the outcome of a procurement competition, who must apply to the High Court: Northern Ireland Public Procurement Handbook, *ibid.*, p.30.

⁹⁷ Committee for Finance and Personnel – Report on the Inquiry into Public Procurement in Northern Ireland, accessible at: http://archive.niassembly.gov.uk/finance/2007mandate/reports/Report_19_08_09R.htm

4.1.2 General procurement policy

The 2002 Review of Public Procurement recommended that the Executive strengthen both its policy and management structures, with an emphasis on the definition and application of the concept of “value for money”.⁹⁸ The Executive approved the current policy following this review.⁹⁹ It covers procurement by central government Departments, their Agencies, Non-Departmental Public Bodies (NDPBs) and Public Corporations.¹⁰⁰ It applies to district councils on a voluntary basis, though they are in any case bound by the EU law and UK regulations.

The current policy requires that all public procurement in Northern Ireland is subject to competition to ensure best value for money, and proceeds in line with requirements under the EU Directives, and the UK Public Contracts Regulations (2006) and Utilities Contracts Regulations (2006). Under the policy, value for money is defined as, “...the most advantageous combination of cost, quality and sustainability to meet customer requirements”.¹⁰¹

In addition, the policy states that:

- *cost* means consideration of the whole life cost of the procured goods or services;
- *quality* means meeting a specification which is fit for purpose and sufficient to meet the customer’s requirements;
- *sustainability* means economic, social and environmental benefits, considered in the business case, in support of the *Northern Ireland PfG*.

The policy further sets out twelve guiding principles to govern the conduct of public procurement, which are intended “...to reflect the statutory obligations related to equality of opportunity and sustainable development and link to the PfG”.¹⁰²

These principles are:

- **Accountability:** effective mechanisms must be in place in order to enable Departmental Accounting Officers and their equivalents in other public bodies to discharge their personal responsibility on issues of procurement risk and expenditure.
- **Competitive supply:** procurement should be carried out by competition unless there are convincing reasons to the contrary.
- **Consistency:** suppliers should, all other things being equal, be able to expect the same general procurement policy across the public sector.
- **Effectiveness:** public bodies should meet the commercial, regulatory and socio- economic goals of government in a balanced manner appropriate to the procurement requirement.
- **Efficiency:** procurement processes should be carried out as cost effectively as possible.

⁹⁸ Northern Ireland Public Procurement Policy Handbook, p.30.

⁹⁹ http://www.dfpni.gov.uk/pdf-annexec_rev.pdf. The policy has since been amended on a number of occasions. The latest version from December 2012 includes an updated list of departments and councils to which the policy applies.

¹⁰⁰ A full list of all the public bodies to which the policy applies is contained in the policy at Annex A.

¹⁰¹ Public Procurement Policy Northern Ireland , p. 4-5.

¹⁰² *Ibid* p.4.

- **Fair-dealing:** suppliers should be treated fairly and without unfair discrimination, including protection of commercial confidentiality where required. Public bodies should not impose unnecessary burdens or constraints on suppliers or potential suppliers.
- **Integration:** in line with the statutory duties on equality of opportunity and sustainable development and the Executive’s policy on joined-up government, procurement policy should pay due regard to the Executive’s other economic, social and environmental policies, rather than cut across them.
- **Integrity:** there should be no corruption or collusion with suppliers or others.
- **Informed decision-making:** public bodies need to base decisions on accurate information and to monitor requirements to ensure that they are being met.
- **Legality:** public bodies must conform to European Community (EC) and other legal requirements.
- **Responsiveness:** public bodies should endeavour to meet the aspirations, expectations and needs of the community served by the procurement.
- **Transparency:** public bodies should ensure that there is openness and clarity on procurement policy and its delivery.

While the policy describes, at a high level, some of the implications of these principles for public procurement processes, detailed guidance on their implementation and on how to ensure compliance with the legal framework is left to the Procurement Board, CPD and CoPEs. Human rights are not mentioned explicitly in the Policy, except in relation to the role of the CPD in ensuring adherence to legal obligations, which includes the implications of the Human Rights Act 1998 for procurement.¹⁰³

4.1.3 Procurement and Equal Treatment

Concerning the compliance of public procurement with existing statutory duties not to discriminate, in the policy the Executive agrees to bring forward new legislation to make clear that these duties already prohibit discrimination in the award of procurement contracts. The intention is also stated to establish sanctions to prevent companies found guilty of persistent breaches of anti-discrimination law from benefiting from public procurement contracts. Though both measures have yet to be given effect, the Equality Commission for Northern Ireland and CPD have issued joint guidance on meeting the requirements of section 75 Northern Ireland Act in the procurement context.¹⁰⁴

4.1.4 Procurement and Sustainability

As noted above, value for money has been defined by the Executive as “...the most advantageous combination of cost, quality and sustainability to meet customer requirements”,¹⁰⁵ while “sustainability” is said to refer to “economic, social and environmental benefits”, which are in turn linked to the PfG.

¹⁰³ Public Procurement Policy Northern Ireland, p.15.

¹⁰⁴ For more see section 4.3.1.

¹⁰⁵ Public Procurement Policy Northern Ireland, p.3.

The purpose of the PfG is to set the strategic context for the Budget, Investment Strategy and Economic Strategy for Northern Ireland.¹⁰⁶ In the PfG, the Executive commits to "...include social clauses in public procurement contracts for supplies, services and construction," by the end of 2015. To support this aim, the PfG undertakes to develop a *Procurement Guidance Note* on social clauses (see section 4.3 below). It also commits to revising the Northern Ireland Procurement Board's *Strategic Plan* in order to incorporate targets for the implementation of social clauses by all Northern Ireland government departments.

The Executive's Sustainable Development Strategy *Everyone's Involved* also draws attention to public procurement. Commitment 16 of the strategy refers to the establishment of "...robust reporting mechanisms for sustainable development to support implementation".¹⁰⁷ In this context it is highlighted that:

The scale of public sector procurement expenditure provides leverage and significant opportunities to support the delivery of equality of opportunity and sustainable development, which includes economic, social and environmental outcomes. This is an area in which the Executive is determined to demonstrate its leadership.

The primary objective of public procurement policy is achieving best value for money. 'Best value for money' is defined in the Northern Ireland Public Procurement Policy as "the optimum combination of whole life cost and quality (or fitness for purpose) to meet the customer's requirements". This definition allows for the inclusion, as appropriate, of social, economic and environmental goals within the procurement process.¹⁰⁸

4.1.5 Procurement Guidance

Materials produced by CPD and the CoPEs further elaborate and explain aspects of the Procurement Policy for the benefit of procurement personnel. The main guidance document is the *Northern Ireland Public Procurement Policy Handbook*.¹⁰⁹ The *Handbook* describes the legal and policy frameworks that apply and the roles and responsibilities of key entities. Human rights are not mentioned specifically anywhere in this document.

Besides the *Handbook*, a range of *Procurement Guidance Notes*¹¹⁰ for procurement personnel in public authorities provide advice on specific issues and information on best practice.

¹⁰⁶ Northern Ireland Programme for Government 2011-2015: <http://www.northernireland.gov.uk/pfg-2011-2015-final-report.pdf>.

¹⁰⁷ *Everyone's Involved*, Northern Ireland Sustainable Development Strategy, p.39, accessible at <http://www.ofmdfmi.gov.uk/eisusdevstrategy.pdf>.

¹⁰⁸ *Ibid* p. 33.

¹⁰⁹ Above, note 67.

¹¹⁰ Accessible at: http://www.dfpni.gov.uk/index/procurement-2/cpd/cpd-policy-and-legislation/content_-_cpd_-_policy_-_procurement_guidance_notes.htm.

Procurement Guidance Notes
<p>Sustainable public procurement</p> <ul style="list-style-type: none"> – Integrating sustainable development into the procurement of food and catering (Guidance Note 01/08) – Procurement of Timber and Wood Products (Guidance Note 04/06) – Procurement of Fair Trade Products (Guidance Note 02/06) – Integration of Environmental Considerations into Public Procurement (Guidance Note 04/04) – Integration of Social Considerations into Public Procurement (Guidance Note 03/04)
<p>Public Procurement Management</p> <ul style="list-style-type: none"> – Procurement Guidance Note 05/12 - Simplified Approach to Procurement Over £30k and Under Threshold – Procurement Guidance Note 04/12 - Procurement Control Limits and the Basis for Contract Awards – Procurement Guidance Note 03/12 - Liability and Insurance in Government Contracts – Procurement Guidance Note 01/12 - Contract Management Procedures and Principles – Procurement Guidance Note 03/09: Procedures and principles for application of threshold limits as part of the Gateway Review process – Procurement Guidance Note 02/09: Procedures and Principles for the Evaluation of Tenders – Procurement Guidance Note 01/09: Best Practice in Programme/Project Management – Procurement Guidance Note 01/07: The Use of Grant for Procurement
<p>SMEs</p> <ul style="list-style-type: none"> – Procurement Guidance Note 06/12 - Helping SMEs Benefit from Subcontracting Opportunities – Procurement Guidance Note 02/12 - Public Procurement: A Guide for Small and Medium Sized Enterprises (SMEs)

Source: CPD

Human rights are not, however, mentioned in the *Guidance Notes*. This includes those in the Sustainable Development section, such as those on *Procurement of Fair Trade Products* and *Integrating Sustainable Development into the Procurement of Food and Catering Services*.

In the context of the Northern Ireland Investment Strategy,¹¹¹ the Strategic Investment Board is currently developing additional guidance in the form of a toolkit on “Delivering Social Benefits in Publicly Procured Works, Supplies and Services Contracts”. This will focus on supporting public purchasers in achieving social benefits for their respective localities, consistently with EU and other legal requirements.¹¹²

¹¹¹ Published in 2012, accessible at <http://www.sibni.org/investment-strategy.htm>

¹¹² An existing version that focuses solely on construction contracts is available at <http://www.isni.gov.uk/Documents/Social%20Clauses%20Toolkit%20-%20Latest%20Draft%20Toolkit%20-%2025%20February%202010.PDF>.

Guidance on equal treatment

At various points the *Guidance Notes* refer to the statutory duties of public authorities under section 75 of the Northern Ireland Act 1998 (for instance, in sections relating to public procurement policy and EU procurement rules). Guidance relating to the inclusion of social clauses highlights that, in addition to EU public procurement rules and the public procurement policy, public procurers in Northern Ireland should have regard to their statutory duties on sustainable development and equal treatment, including under:

- Section 25 of the Northern Ireland (Miscellaneous Provisions) Act 2006, which places a duty on government departments and district councils to ensure that the principles of sustainable development underpin all decisions and actions, and
- Section 75 of the Northern Ireland Act 1998, which requires designated public authorities to have due regard to the need to promote equality of opportunity in carrying out their functions.

Further to this, in relation to procedures for the evaluation of tenders it is highlighted that public procurers should conduct these in a way that is fair, just and equitable, which reflects Civil Service commitments to equality and diversity, as well as obligations under section 75.¹¹³

Dedicated guidance for public authorities on implementing both section 75 and section 25 in the procurement context has been produced jointly by the CPD and the Equality Commission for Northern Ireland. This guidance, entitled *Equality of Opportunity and Sustainable Development in Public Sector Procurement*, clearly states that equality of opportunity and sustainable development should not be seen as “add-ons” in the context of public purchasing, and explains how they can rather be effectively mainstreamed at each stage of the procurement process, for instance, through screening and the use of an equality impact assessment (EQIA).¹¹⁴ The guidance also indicates that where an organisation is charged to fulfill a public function or deliver a public service on behalf of a public authority, it is the authority’s responsibility to ensure these statutory duties continue to be met.¹¹⁵

Guidance on the Human Rights Act 1998

As noted earlier, the Northern Ireland Act 1998 makes provision to ensure that Northern Ireland public authorities act compatibly with the UK’s obligations under international law, including human rights treaties, and with ECHR rights and European Community law.¹¹⁶

However, no guidance has been developed by CPD and the CoPEs that specifically addresses the impact of the Human Rights Act 1998 with regard to public procurement. *Get in on the Act*, a general guidance document for public authorities on the HRA 1998 that was produced by the Office of the First Minister and Deputy First Minister does address public procurement although minimally.

Under the heading, *Guidance on Procurement and Contracting Out Services*, this states:

In many cases the requirement to meet convention rights will carry forward to the appointed contractor. If the contractor fails to meet these standards a public authority may find itself being held responsible for breaches of convention rights by its contractor.¹¹⁷

¹¹³ Procurement Guidance Note 01/12, 2.11; Guidance Note 03/04, 8; Guidance Note 01/08, 3.3; etc.

¹¹⁴ Equality of Opportunity and Sustainable Development in Public Sector Procurement – A guide for procurement professionals, p.15.

¹¹⁵ Ibid. 21.

¹¹⁶ Northern Ireland Act 1998, ss.24, 26, accessible at <http://www.legislation.gov.uk/ukpga/1998/47/contents>.

¹¹⁷ *Get in on the Act*, First Minister and Deputy Minister Northern Ireland, available at: http://www.ofmdfmi.gov.uk/human_rights_reportnew1-3.pdf, accessed 13-03-2013.

It continues:

This means that the HRA should be taken into account from the outset when a public authority is deciding if it wishes to run a procurement process. This stage of identifying a need...and developing the business case for the service or good to be provided is a key point at which consideration of the HRA should take place to ensure any good or service is provided in a way that takes account of the HRA and is compatible with Convention rights.

Such consideration should follow through to the subsequent development of specifications. Staff involved in developing specifications and user requirements have a good deal of scope in deciding core requirements and these should reflect human rights obligations along with the test of need, affordability and effectiveness in the conditions of the contract.

Specification, process of selection, tender evaluation and contract management should always be subject to professional advice from procurement practitioners either from [CPD]...or a relevant [CoPE] who are responsible under public procurement policy for managing procurement activity throughout the public sector on behalf of Departments and their associated bodies and in specific cases may require legal advice from DSO.¹¹⁸

Sector-specific guidance

CPD has devoted particular attention to the construction sector. The Buildsafe NI initiative aims to eliminate deaths and substantially reduce injuries in construction through improvements in the application and management of health and safety processes.¹¹⁹ The initiative was launched in 2003 under the auspices of the Construction Industry Forum for Northern Ireland (CIFNI), with the aim of using the procurement process to promote health and safety standards and performance. In 2011, a Government Construction Clients Action Plan was issued to enhance performance in five areas: evaluation of supply chain; health and safety capability; certification of health and safety management systems; training; and monitoring and reporting.¹²⁰ Though human rights are not mentioned explicitly in the framing of the Action Plan or the initiative, efforts to improve health and safety performance of government contractors are relevant to the prevention of workplace death and injury, and therefore to human rights.

¹¹⁸ Ibid.

¹¹⁹ The CPD Website section on the Buildsafe NI initiative: <http://www.dfpni.gov.uk/index/procurement-2/cpd/cpd-policy-and-legislation/buildsafe-ni/third-party-cert.htm>, accessed 03-03-2013.

¹²⁰ See further: <http://www.dfpni.gov.uk/index/procurement-2/cpd/cpd-policy-and-legislation/buildsafe-ni.htm>.

4.2 Public Services

4.2.1 An example: Health and Social Care Services

Responsible bodies

Planning, delivery and accountability over health and social care in Northern Ireland, including in relation to contracted out services, spans a range of bodies. Those with the principal responsibilities in this area are set out in the table below.

Health and Social Care Board (HSCB)	HSCB is responsible for meeting the health and social care needs of the Northern Ireland population through commissioning services, resource management, performance management and service improvement. HSCB has five Local Commissioning Groups covering the 5 geographical areas of the Health and Social Care Trusts.
Health and Social Care Trusts	There are 6 HSC Trusts in Northern Ireland. Five of these provide integrated health and social care services for geographical areas: Belfast HSC Trust, South Eastern HSC Trust, Western HSC Trust, Southern HSC Trust and Northern HSC Trust. These HSC Trusts manage and administer hospitals, health centres, residential homes, day centres and other health and social care facilities and provide health and social care services to the community. The sixth HSC Trust is the Northern Ireland Ambulance Service.
Public Health Agency (PHA)	The PHA is responsible for improving health and wellbeing and health protection. The PHA is jointly responsible with the HSCB for the development of a fully integrated commissioning plan for health and social care in Northern Ireland. The PHA is tasked to work in partnership with local government, key organisations and other sectors in order to improve health and wellbeing and reduce health inequalities.
Patient and Client Council (PCC)	PCC is a Northern Ireland wide body with local offices covering the geographical areas of the five integrated Health and Care Trusts. The PCC's function is to act as an independent voice for patients, clients, carers, and communities on health and social care issues.
Business Services Organisation (BSO)	BSO is responsible for providing business support and specialist professional services to the whole of the Health and Social Care sector including in the areas of human resources, finance, legal services, procurement, ICT and other services.

Source: Department of Health, Social Services and Public Safety.

Procurement policy

The HSCB does not have a dedicated policy or guidance material specifically addressing human rights in the context of commissioning and contracting out of health and social care services. However, there are HSCB materials which address human rights generally, and also materials focused on compliance with the section 75 equality duty.

On its website, the Department of Health, Social Services and Public Safety (the DHSSPS) mentions the HRA 1998 and expresses a commitment to fulfilling its obligations under other international treaties, including UN Conventions on the Rights of the Child, the Rights of Persons with Disabilities, the Elimination of Racial Discrimination and the Elimination of Discrimination Against Women.¹²¹

In its *Equality, Good Relations and Human Rights Strategy and Action Plan*¹²² of 2008, the DHSSPS identifies equality, good relations and human rights as core values.¹²³ The Plan states:

Equality and human rights issues in Health and Social Care are largely about matters such as respect for life, dignity, equality and access – how people are treated, should be treated and expect to be treated. It is about putting individuals at the heart of service provision.¹²⁴

The Plan sets out the key articles of the ECHR that impact on health and social care services, and also refers to the UN Convention on the Rights of the Child and Convention on the Elimination of All Forms of Discrimination Against Women. It recounts problems experienced by groups in society in relation to health care, in particular, racial and ethnic minorities, lesbian, gay bisexual and transgender persons, and persons with mental health problems, amongst others.

In addition, the HSCB *Commissioning Plan 2012/2013* includes a chapter on Equality, Good Relations and Human Rights. This identifies the duty to promote equality as closely linked to the statutory goals of the HSCB to improve health and reduce health and social care inequalities within Northern Ireland.¹²⁵

In this connection, the *Commissioning Plan* sets out the principles that the HSCB/PHA need to follow during the commissioning process to embed equality and diversity, and human rights, including:

- commissioning services which are inclusive and reflect and promote privacy, dignity and accessibility;
- engaging with and involving local communities and service users so that we understand their needs and give them a sense of ownership of their own health and social care outcomes; and
- partnering with others to deliver improved outcomes for our communities.¹²⁶

¹²¹ Department of Health, Personal Social Services and Public Safety website on Human Rights: <http://www.dhsspsni.gov.uk/index/hss/equality/eq-humanrights.htm>.

¹²² Equality, Good Relations and Human Rights Strategy and Action Plan, Department of Health, Personal Social Services and Public Safety: <http://www.dhsspsni.gov.uk/strategyandactionplan.pdf>.

¹²³ Ibid p.9.

¹²⁴ Ibid p. 10.

¹²⁵ HSCB *Commissioning Plan 2012/2013*, Accessed 13-03-2013: http://www.hscbusiness.hscni.net/pdf/HSCB_PHACommissioning_Plan_2012-13.pdf.

¹²⁶ Ibid, p.51.

Implementation of section 75 equality duty

As a public authority, the HSCB is required to have due regard to the need to promote equality of opportunity and good relations in carrying out its functions under section 75 and Schedule 9 of the Northern Ireland Act 1998. This includes the development of an Equality Scheme, and the HSCB's current equality scheme was approved by the Equality Commission for Northern Ireland in 2011.¹²⁷

According to the scheme, HSCB/PHA is committed to ensuring that the developmental stage of commissioning is informed by explicit consideration of the needs, experiences of, and impacts on, persons across the nine categories protected by the equality duties. This includes using participation to improve the evidence base for commissioning.¹²⁸

4.3 District Councils

At present Northern Ireland local councils have limited powers as compared to those, for example, of local authorities in Great Britain. Under the proposed local government reforms, the new district councils to be established by 2015 will have new responsibilities and powers in the areas of planning, urban regeneration, local economic development and tourism. District councils will therefore be increasingly active in the procurement area.¹²⁹

The Local Government (Northern Ireland) Bill includes provisions for a general power of competence, similar to that in England and Wales, which allows councils to take any action that is not prohibited in law. This would allow councils to take innovative actions and aims to offer greater flexibility to councils wishing to engage in activities that promote the social, environmental and economic well-being of the district.¹³⁰

Although the Northern Ireland Public Procurement Policy applies to local councils on a voluntary basis, they are still required to meet the terms of UK and EU procurement laws. On this footing, some councils have developed their own statements and documents on how section 75 of the Northern Ireland Act 1998 Ireland applies to the public procurement processes for which they are responsible.¹³¹

¹²⁷ Equality Scheme for the Health and Care board: <http://www.hsboard.hscni.net/equality/Equality%20Scheme%20-%20May%202011%20-%20PDF%20352KB.pdf>.

¹²⁸ Ibid.

¹²⁹ Local Government Reform. Back to basics... what are the benefits? Department of Environment, February 2013, available at: http://www.doeni.gov.uk/benefits_of_local_government_reform.pdf.

¹³⁰ Local Government (Northern Ireland) Bill, as introduced 23 September 2013, Clause 82. See: <http://www.niassembly.gov.uk/Documents/Legislation/Bills/Executive-Bills/session-2013-2014/Local%20Government%20Bill/Local%20Government%20Bill%20as%20Introduced.pdf>.

¹³¹ See e.g. Antrim Borough Council's Equality Impact Assessment 2007, which refers to procurement alongside service provision and employment: <http://www.antrim.gov.uk/pub/uploads/EqualitySchemeApril05.doc>.

4.4 Excepted and Reserved Matters

As indicated in section 4.1, procurement connected to excepted and reserved matters under the Northern Ireland Act 1998 remains in the hands of the UK government.

Excepted matters ¹³²	Reserved matters ¹³³
<ul style="list-style-type: none"> – defence and armed forces – nationality, immigration and asylum – national security – nuclear energy 	<ul style="list-style-type: none"> – firearms and explosives – financial services and pensions regulation – broadcasting – import and export controls – navigation and civil aviation – international trade and financial markets – telecommunications and postage – the foreshore and seabed – disqualification from Assembly membership – consumer safety – intellectual property

At the UK level, the Cabinet Office has the overall duty to ensure compliance with international legal obligations concerning public procurement and is responsible for developing and issuing guidance. No dedicated Cabinet Office guidance on human rights and procurement could be identified in the course of this study.

Recently produced guidance does however address the issue of securing local social benefits through procurement. The Public Services (Social Value) Act 2012 requires contracting authorities in England and Wales to consider the wider social value of services contracts. According to the Cabinet Office guidance:

...the Act will require commissioners and procurers at the pre-procurement stage to consider how what is to be procured may improve social, environmental and economic well-being of the relevant area, how they might secure any such improvement and to consider the need to consult.¹³⁴

The Act entered into force in England and Wales in January 2013.¹³⁵ The Cabinet Office has produced guidance on the Act for procurers and commissioners.¹³⁶

¹³² The UK government retains responsibility for these matters of national importance. <https://www.gov.uk/devolution-settlement-northern-ireland>, Accessed 14-03-2013.

¹³³ Where legislative authority generally rests with Westminster, but where the Northern Ireland Assembly can legislate with the consent of the Secretary of State. <https://www.gov.uk/devolution-settlement-northern-ireland>, Accessed 14-03-2013.

¹³⁴ The UK Social Value Act 2012 : <http://www.legislation.gov.uk/ukpga/2012/3/enacted>.

¹³⁵ *Significant boost to social enterprises as the Social Value Act comes into force*, Cabinet Office Press Release, January 31st 2013: <https://www.gov.uk/government/news/significant-boost-to-social-enterprises-as-the-social-value-act-comes-into-force>, accessed 13-03-2013.

¹³⁶ The Procurement policy note 10/12: The Public Services (Social Value) Act 2012 can be accessed here: <https://www.gov.uk/government/publications/procurement-policy-note-10-12-the-public-services-social-value-act-2012>.

Conclusions

This chapter presents summary findings and recommendations to promote more effective integration of human rights into public procurement in Northern Ireland under five key themes.

5.1 Legal and Policy Frameworks

The applicable EU and domestic legal frameworks do not present any obstacle to the protection of human rights in public procurement. Indeed, as has been highlighted by the UNGPs, existing obligations on public authorities under human rights law require measures to prevent human rights abuses in this area.

However, current legislation and policy do not make sufficiently clear or explicit how the state's positive duties to protect human rights are to be operationalised by public authorities in the course of purchasing activities. Nor do they highlight the free-standing responsibilities of businesses to respect human rights as highlighted by the UNGPs.

Recommendations

- The Northern Ireland Executive should legislate to make it clear that both human rights legal obligations and domestic equality laws apply to public procurement and to establish sanctions for companies responsible for breaches.
- Government departments in Northern Ireland, the CPD and the Procurement Board should review and revise the policy framework for public procurement in Northern Ireland to ensure effective respect for human rights in accordance with the duties identified under the HRA 1998 and the UNGPs.

5.2 Guidance and other Support for Implementation

Extensive general guidance for public authorities on conducting procurement in line with legal requirements has been produced by the CPD. However, this does not refer to human rights at any stage, as summarised in the table below.

Step	CPD public procurement materials
Advertising stage	There is no explicit guidance on including human rights considerations this stage
Supplier Identification/ screening stage	There is no explicit guidance on including human rights considerations at this stage
Technical specifications	There is no explicit guidance on including human rights considerations at this stage
Selection stage	It is mentioned that suppliers should meet a "standard of expected behaviour" but it is not mentioned how this might relate to respect for human rights
Award stage	Guidance does not clarify the extent to which human rights considerations can be included within assessment of the most economically advantageous tender
Contract clauses	Human rights are not mentioned in guidance on contract clauses
Post-award monitoring / evaluation	No provision for monitoring /evaluation on aspects of performance relevant to respect for human rights
Corrective action	No provision for corrective action based on respect for human rights

Specific guidance on taking account of statutory duties relating to equality of opportunity and sustainable development under section 75 Northern Ireland Act 1998 and section 25 Northern Ireland (Miscellaneous Provisions) Act 2006 respectively has been developed by the CPD and the Equality Commission for Northern Ireland. Limited general guidance has been published for civil servants on the Human Rights Act 1998, which draws attention in passing to public procurement. However, specific guidance on procurement in areas where human rights risks are present (e.g. food catering services, fair trade products) do not mention human rights, identify the legal duties of public authorities on human rights that carry over into the procurement area, or explain how these duties can be effectively operationalised in a procurement context.

Interview data furthermore indicated that:

- awareness and knowledge of procurement personnel regarding statutory human rights obligations on public authorities was patchy across central government;
- earlier planned human rights training and capacity building of procurement personnel had not yet been implemented;
- although connections between public procurement and equality of opportunity and health and safety had been highlighted, other human rights issues had not been addressed;
- impact assessment processes in general are not geared towards the identification of impacts on human rights beyond equality of opportunity;
- measures are not in place e.g. for investigation of the human rights track-record of potential suppliers of works, goods and services at the selection stage, or for follow-up and monitoring of human rights impacts of suppliers throughout performance of public contracts or for their evaluation on completion.

Mirroring the lack of clear content on human rights in the legal and policy frameworks for public procurement, these findings confirm that there are gaps in the integration of human rights during purchasing, monitoring and accountability processes.

Recommendations

- Requirements for public authorities and businesses to respect human rights should be fully integrated into general guidance materials on public procurement in Northern Ireland.
- The CPD should immediately develop a Guidance Note on Public Procurement and Human Rights to address how human rights can be effectively mainstreamed throughout each step of the procurement process.
- The CPD should disaggregate services and products purchased by public authorities according to human rights engaged and identify, where appropriate, risk management measures in relation to high, medium and low risk purchase categories, addressing each stage of the procurement process.
- Procurement personnel across all government departments and other relevant public authorities should receive training on human rights.
- Information, advice and training should be made available to tenderers, particularly SMEs, on achieving respect for human rights in a business context.

5.3 Public Services

The statutory duty established by section 6 HRA 1998 was clearly intended to embrace private delivery of public services. In Northern Ireland, in the area of health and social care, this is reinforced by explicit policy commitments to ensuring respect for human rights that have been adopted, for example, by responsible bodies in Northern Ireland (specifically the Department of Health, Social Services and Public Safety and the Health and Social Care Board). These policy commitments are also, to an extent, integrated at the level of planning and commissioning health and social care services.

While there has been an emphasis on diversity, inclusion, dignity and accessibility, it would appear that a full appraisal of potential human rights abuses connected to purchasing of health and social care services has not been undertaken. In addition, information was not found to suggest that measures to cascade existing policy commitments on human rights and equality through the procurement process are in operation.

Recommendations

- The Northern Ireland Executive should ensure that departments identify public services delivered privately within their respective policy areas. This should be followed by an evaluation of human rights risks associated with such services, and the implementation of appropriate measures to mitigate such risks, in line with the UNGPs.

5.4 District Councils

District councils can use government policy and guidance (with regard to section 75 of the Northern Ireland Act 1998 sustainability) on a voluntary basis but there is no dedicated policy framework, guidance or other support for councils in Northern Ireland in relation to human rights and procurement. Given that councils are subject to the same EU and domestic legal obligations on public procurement as government departments, the absence of dedicated guidance leaves a significant gap, particularly given the likely expansion of district councils' duties and procurement powers under the proposed reform of local government.

Recommendations

- The Department of the Environment should ensure that dedicated guidance is developed for district councils on integrating human rights into procurement processes.

5.5 Excepted and Reserved Matters

Aside from the commitments stated in the UK national action plan, the research could not identify UK-level policy or guidance materials that address integrating human rights into public procurement. From the Northern Ireland perspective, this leaves a gap with regard to procurement connected to reserved and excepted matters. Concerns have been raised in Northern Ireland that public purchasing of services connected to excepted and reserved matters, in particular, services connected to asylum and immigration detention, does not adequately reflect state and private sector responsibilities to respect human rights.¹³⁷

Recommendations

- The Northern Ireland Executive should ensure clear lines of accountability between the Northern Ireland Executive and UK central government regarding human rights protection in public contracts related to excepted and reserved matters.

¹³⁷ Issue highlighted by the All Party group on Ethnic Minority Communities following the UK Border Agency's appointment of SERCO to provide housing for refugees and asylum seekers in Northern Ireland. See: <http://www.bailii.org/ew/cases/EWHC/Admin/2012/1804.html>.

Annexes

Annex I Selected References

Human Rights

- **Human Rights Act 1998**
<http://www.legislation.gov.uk/ukpga/1998/42/introduction>
- **Get in on the Act – Learning About the Human Rights Act**
 Office of the First Minister and Deputy Minister Northern Ireland
http://www.ofmdfmi.gov.uk/human_rights_reportnew1-3.pdf
- **About human rights**
 Northern Ireland Human Rights Commission Website
<http://www.nihrc.org/index.php/about-human-rights>
- **Equality Law**
 Equality Commission for Northern Ireland Website http://www.equalityni.org/sections/default.asp?cms=The Law_The legislation&cmsid=4_278&id=278&secid=5
- **Guiding Principles on Business and Human Rights – Implementing the Protect, Respect, Remedy Framework**
 United Nations Human Rights Office of the High Commissioner
http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
- **UN Human Rights Council Resolution 17/4 on Human rights and transnational corporations and other business enterprises**
 UN Human Rights Council
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>

Public Procurement Northern Ireland

- **Program for Government 2011-2015 Northern Ireland**
Northern Ireland Executive
<http://www.northernireland.gov.uk/pfg-2011-2015-final-report.pdf>
- **Everyone's Involved: Sustainable Development Strategy**
Northern Ireland Executive
<http://www.ofmdfmi.gov.uk/eisusdevstrategy.pdf>
- **Northern Ireland Public Procurement Policy**
Department of Finance and Personnel, Central Procurement Directorate, Version 8, 2012
<http://www.dfpni.gov.uk/index/procurement-2/cpd/cpd-policy-and-legislation/ni-pp-policy/nipp-v8-01102012.pdf>
- **Public Procurement Policy**
UK Cabinet Office Website, latest update 07/02/2013
<http://procurement.cabinetoffice.gov.uk/policy-capability/latest-policy-and-regulations/public-procurement-policy>
- **Northern Ireland Public Procurement Policy Handbook**
Department of Finance and Personnel, Central Procurement Directorate, Version 3, 2011
http://www.dfpni.gov.uk/index/procurement-2/cpd/cpd-policy-and-legislation/ni-pp-policy/cpd_policy_ni_public_procurement_policy_handbook/ni-ppp-handbook-v3-june-2011.pdf
- **Procurement Guidance Notes**
Department of Finance and Personnel, Central Procurement Directorate
http://www.dfpni.gov.uk/index/procurement-2/cpd/cpd-policy-and-legislation/content_-_cpd_-_policy_-_procurement_guidance_notes.htm
- **Equality of Opportunity and Sustainable Development in Public Sector Procurement – A guide for procurement professionals**
Department of Finance and Personnel, Central Procurement Directorate
http://www.dfpni.gov.uk/index/procurement-2/cpd/cpd-policy-and-legislation/cpd-sustainability/content_-_cpd_equality_of_opportunity_and_sustainable_development_gateway_page/equality_of_opportunity_and_sustainable_development_-_full_guidance.pdf
- **Buildsafe NI Government Construction Clients Action Plan 2011**
Department of Finance and Personnel, Central Procurement Directorate
<http://www.dfpni.gov.uk/index/procurement-2/cpd/cpd-policy-and-legislation/buildsafe-ni.htm>
- **Department of Health, Social Services and Public Safety on Human Rights**
Department of Health, Social Services and Public Safety Website
<http://www.dhsspsni.gov.uk/index/hss/equality/eq-humanrights.htm>

EU Public Procurement

- **Buying Social: A Guide to Taking Account of Social Consideration in Public Procurement**
European Commission 2010
<http://ec.europa.eu/social/BlobServlet?docId=6457&langId=en>
- **Evaluation Report Impact and Effectiveness of EU Public Procurement Legislation**
European Commission 2011
http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/evaluation-report_en.pdf
- **EU Green Paper – Modernising Public Procurement**
European Commission 2011
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0015:FIN:EN:PDF>
- **Modernisation of procurement directives**
European Commission Website
http://ec.europa.eu/internal_market/publicprocurement/modernising_rules/reform_proposals_en.htm
- **A renewed EU Strategy 2011-2014 on Corporate Social Responsibility**
European Commission 2011
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>
- **Consultation response - European Commission's Green Paper on the modernisation of EU public procurement policy- Towards a more efficient European Procurement Market**
European Group of National Institutions for the Promotion and Protection of Human Rights' European Union Members, 2011
http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/701_ecprocurement2011_/701_ecprocurement2011_en.pdf

Annex II Guidance Questions for Interviews

Interview - Northern Ireland Public Procurement and Human Rights

Interview information

The aim of this interview is to support the analysis on Northern Ireland Public Procurement and Human Rights. The interview will be semi-structured based on the guidance questions below. The name, title, and organization of the respondent will be included in the final report.

Guiding Questions

Human rights in public procurement processes:

- How, if at all, are environmental, social and/or human rights considerations included in the following procurement stages:
 - Advertising Stage
 - Supplier identification/screening Stage
 - Award Stage
 - Post-award monitoring and/or evaluation
- Are environmental, social and/or human rights considerations included in technical specifications or contract clauses – including in criteria used for audits?
- How are environmental, social and/or human rights considerations reflected in contracts with providers of essential public services (e.g. education, residential care, healthcare, housing, criminal justice or immigration-related services)?

Meeting standards/expectations:

- To what extent and how do standards at the following levels influence the potential inclusion of environmental, social and/or human rights considerations in public procurement processes – UK/EU/international (UN, WTO, OECD)?

General Questions:

- What are your views on how Northern Ireland could further improve and strengthen integration of human rights considerations in public procurement processes?
- Are there any other government or other measures that you would like to see promoting the integration of human rights considerations in public procurement?

Contact us

If you would like to know more about the work of the Commission, or any of the services we provide, please contact us.

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