



## Reducing the risk of human trafficking and exploitation in the performance of public contracts.

### Purpose

1. This note is to promote a range of measures in place aimed at helping to reduce the risk of human trafficking and exploitation in the performance of public contracts. The previous note [SPPN 09/2016](#) on ensuring compliance with environmental, social and labour laws relates.

### Key points

- There are a number of measures in the [Public Contracts \(Scotland\) Regulations 2015](#) (PC(S) R 2015) and the [Procurement \(Scotland\) Regulations 2016](#) (P(S) R 2016) aimed at ensuring contractors compliance with environmental, social, and labour laws when performing public contracts.
- The [sustainable procurement tools](#) and [guidance](#) have been designed to help public bodies comply with policy and legislation, including how to take an ethical approach in their procurement activity. These were updated in September 2018 to ensure they take account of human rights considerations including the UN Guiding Principles and human trafficking and exploitation.

### Background

2. By using the measures available to them through public procurement legislation, including relevant clauses in their contracts, checking that relevant suppliers have a slavery and human trafficking statement (section 54 of the Modern Slavery Act 2015), and addressing ethics through contract and supplier management, public bodies can help reduce the likelihood of human trafficking and exploitation occurring in their contracts.

## Legislation

3. [Regulation 8 of Procurement Reform \(Scotland\) Act 2014](#) (PR(S)A 2014) places a [Sustainable Procurement Duty](#) on public bodies to consider how their procurements can be used to improve social, economic and environmental well-being, and reduce inequality and act in a way to secure this.

4. [Regulation 58\(1\)\(i\) of PC\(S\)R 2015](#) places a legal obligation on public bodies to exclude companies from tendering for public contracts where they have been convicted of any offence under [Part 1 of the Human Trafficking and Exploitation \(Scotland\) Act 2015](#)(18) or under any provision referred to in the Schedule to that Act. [Regulation 58\(8\)\(a\) of PC\(S\)R 2015](#) and [9\(5\)\(a\) of P\(S\)R 2016](#) allow public bodies to exclude companies from tendering for public contracts where they have breached any obligations in the fields of environmental, social or labour law (this would include the Human Trafficking and Exploitation (Scotland) Act 2015 and the Modern Slavery Act 2015). This applies to both regulated procurements (where the estimated value is £50,000 or more for goods and services, and £2,000,000 or more for works, up to EU thresholds) and EU procurements (at or above the EU thresholds). In addition, under [Regulation 64\(4\) and 64\(5\) of PC\(S\)R 2015](#) public bodies can require companies to replace sub-contractors where they have breached any obligations in the fields of environmental, social or labour law.

5. [Regulation 19\(4\) of PC\(S\)R 2015](#) places a legal obligation on public bodies to include relevant clauses in their contracts to ensure those they contract with comply with environmental, social and employment law obligations. Scottish Government standard contract terms and conditions allow for contract termination if the contractor or a sub-contractor fails to comply with environmental, social and employment law when carrying out that contract. Contract conditions were included in [SPPN 09/2016](#) and asked public bodies to consider including similar conditions in their terms and conditions; the intention being that public sector suppliers are encouraged to have 'clean' supply chains.

6. [Regulation 57\(2\) of PC\(S\)R 2015](#) allows public bodies to reject bids that do not comply with applicable obligations in the fields of environmental, social and labour law established by EU law, national law, or collective agreements.

7. [Regulation 69\(5\)](#) places a legal obligation on public bodies to reject bids that have been found to be abnormally low because they do not comply with applicable obligations in environmental, social or labour law.

## Tools and guidance

8. Revised [sustainable procurement tools](#) and guidance covering the purchase of products and services where there may be concerns about human rights, working conditions and exploitation, or products that may contain conflict minerals has been published. The [supporting guidance](#) provides information on how to tackle risks / opportunities at various stages of the procurement process.

## Suggested approach

9. Scottish Procurement advocates taking an approach to human trafficking and exploitation that considers actions on a case-by-case basis. This helps to ensure relevance and proportionality, which takes into account the subject matter of the contract, associated market analysis, along with value and risk.

- Reducing the risk of human trafficking and exploitation in public contracts can be considered systematically alongside other factors by using the [sustainable procurement tools](#) and relevant [supporting guidance](#). Buyers can use the sustainability test to help establish ethical risk they can influence, and identify mitigating action through tender and contract management techniques.
- Invitations to tender can include provisions aimed at ensuring supply chains are free from human trafficking and exploitation. For example, specifications (which form part of the contract) could incorporate relevant and proportionate key performance indicators and describe the mechanism for measuring performance. Any requirements included should be relevant to the contract and associated supply chain. There should also be intent on the part of the public body to check compliance with these requirements following award of the contract.
- Terms and conditions can allow for termination of contracts with suppliers and sub-contractors for breaches of social, environmental or employment law.
- Specific terms and conditions of contract can be developed aimed at ensuring supply chain transparency and protections, for example requiring contractors to:
  - prepare and maintain appropriate policies and procedures to identify, prevent, mitigate and account for labour and human rights risks in its own activities, through its supply chains and with other business relationships, relevant to the framework / contract;
  - provide the public body with the names, locations and details of the roles of suppliers (including details of the factories used by suppliers and specific components produced in each factory) within the contractors supply chain;
  - ensure that all goods supplied under the contract are produced in accordance with all International Labour Organisation (ILO) conventions that have been ratified by the country of their origin.

- ensure the outcomes of suppliers supply chain audits are subject to corrective actions by the suppliers in a timely manner, and provide the public body on request with details in its possession or control of any actions taken or proposed to be taken in so far as they relate to their supply chain.
- Transparency and provision to commission independent third party audits can be built in to contracts where it has been identified that there is a risk of human rights abuses or trafficking and exploitation taking place.
- Ethics can be included as a standing item at contract and supplier management meetings as appropriate, focusing discussion with suppliers around their supply chain and human trafficking and exploitation. Progress across a range of relevant ethical outcomes can be tracked and reported. For example, auditing; instances of human rights abuse and remediation; complaints; breaches of local labour law; and how they can demonstrate continual improvement. If using a [balanced scorecard](#) approach, human trafficking and exploitation could be covered under the sustainability quadrant.
- Buyers can check that their relevant contracted suppliers have a slavery and human trafficking statement (compliance with [section 54 of the Modern Slavery Act 2015](#)).
- Public bodies can use their organisational procurement strategies and annual reports to highlight good practice in relation to human rights and human trafficking and exploitation (a procurement strategy must include a statement of a body's general policy on the procurement of fairly and ethically traded goods and services). Together, strategies and annual reports generally support increased transparency and visibility of public procurements.

### **Action required**

10. Public bodies are asked to note the measures relating to human rights as described in this policy note, and to consider their approach to reducing the risk of human trafficking and exploitation in their supply chains.

### **Dissemination**

11. Please bring this SPPN to the attention of all relevant staff within your field of responsibility to whom it may be of interest.

## Contact

1. If you have any questions about this SPPN, please email the Scottish Procurement mailbox at [scottishprocurement@gov.scot](mailto:scottishprocurement@gov.scot). You can also write to Scottish Procurement, The Scottish Government, 5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU.