

Guidance on Business and Human Rights: a Review

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Executive summary

Context

In June 2011, the United Nations Human Rights Council endorsed a new set of *Guiding Principles* on business and human rights. The *Guiding Principles* were prepared by the Secretary General Special Representative on Business and Human Rights, Professor John Ruggie. They are *Guiding Principles* for the implementation of the United Nations *Protect, Respect and Remedy Framework* Ruggie had introduced in 2008. The *Framework* and the *Guiding Principles* set up standards (e.g. businesses have a responsibility to respect human rights) and also provide some guidance for companies to achieve them (e.g. companies should adopt a human rights policy with a follow-up mechanism).

John Ruggie's work is only one initiative among others that have blossomed in this area, which is attracting increased attention. Among other prominent initiatives are the *OECD Guidelines on Multinational Corporations*, the business-led *Kimberley Process*, the *Equator Principles*, the *Global Reporting Initiative*, the setting up of *ISO 26,000* and fair trade certification. The initiatives in this field (both binding and voluntary) take a variety of forms both at domestic and international levels including treaties, recommendations, statutes, guidance, toolkits and codes of conduct.

In the UK a number of statutes such as the *Equality Act* and the *Bribery Act* touch upon this area but without explicitly making the link between businesses and human rights concerns. There is also significant overlap between the main initiatives. All this gives an impression of complexity and may discourage UK businesses, particularly small and medium enterprises (SMEs) from engaging with human rights.

Moreover, despite the growth of these initiatives, there has been a relative neglect of any attempt to understand their impact on SMEs. Ruggie himself has acknowledged that one of the most significant challenges for his own *Framework* is the extent to which it may be amenable to being "scaled-down" and disseminated. As in other countries, prominent multinational corporations headquartered in the UK have been engaged in current developments regarding business and human rights, however smaller businesses have not been able to participate on the same footing. Yet, in many circumstances, SMEs have significant obligations when it comes to human rights.

In October 2010, the Equality and Human Rights Commission established a Working Group on Business and Human Rights with the key aim of encouraging businesses to integrate human rights into their business practices. The Working Group has concluded that a review and evaluation of existing guidance on business and human rights should be undertaken before any new guidance is produced in order to avoid unnecessary duplication. It is hoped that the present report will inform the Working Group's work.

Aims of the report

This report aims to clarify the existing standards in business and human rights, and to give practical guidance to businesses, including SMEs, vis-à-vis the evolving regulatory framework. It also aims to review key UK statutes from a human rights and business perspective so as to emphasise their relevance to the field.

Moreover, the report (Chapter 4) attempts to bring clarity to the issue of the applicability of the Human Rights Act 2000 to businesses who interact with the government (delivering a public service or procuring goods or services).

Methodology

In preparing this report the authors have reviewed a considerable number of business and human rights initiatives (developed at international and UK levels). All the initiatives reviewed are presented in the Annex, while the main ones are examined in detail in Chapter 2. In undertaking the review, the aim was to compile and highlight the key relevant features of these instruments and guidelines. In doing so, the authors have focused on the following questions:

- Who produced it?
- What are the key subjects covered?
- Who is it aimed at (e.g. governments, businesses, specific sectors, etc.)?
- What specific industries/sectors are highlighted in the guidance?
- What is its legal status (i.e. is it binding or voluntary?)
- How suitable is the guidance for SMEs based in the UK, as well as large companies with overseas operations?

This broad review has allowed the identification of six human rights areas on which UK businesses are likely to have an impact. Chapter 3 lists the existing international and domestic standards in each of the following areas:

1. Discrimination;
2. Labour rights;
3. Privacy;
4. Customers and Communities;
5. Transparency; and
6. Human Trafficking.

Findings: practical guidance for UK businesses

Each of the headings above are examined (Chapter 3) against existing standards, an assessment that ends with practical guidance in each area. Chapter 5 puts together the practical guidance for all areas in one single list.

The practical guidance identified is inspired from the law, standards and voluntary initiatives related to that area. It is meant to be a guide for businesses to follow and is not drafted in legalistic terms. Some of the guidance derives from, and in some cases is identical to, standards presented before and set out by organisations unrelated to the authors of the present report. In other areas where existing guidance is limited, the authors have attempted to create new guidance that is accessible to businesses including SMEs.

The guidance is aimed at UK businesses, whether operating only in the UK, or abroad. Moreover, all UK businesses should take steps to ensure that their providers along the supply chain follow the guidance, even when suppliers are not mentioned in the guidance.

The added value of the practical guidance proposed in this report is that it covers areas that are most relevant to UK businesses (especially SMEs) in a single document, irrespective of whether the standards are binding or not. In parallel, and to avoid confusion, information about legal obligations of UK businesses under domestic UK law is also made available and can be found under “domestic standards” for each area in Chapter 3.

Business and human rights is a rapidly evolving area of law and policy. Some changes have been introduced in recent years and important ones are afoot. This report gives a current snapshot of existing standards applicable to UK businesses, including SMEs. Where relevant, current discussions about updating the standards are mentioned.

Finally, the guidance set out in this report represents the minimal floor standards in the field of business and human rights. In order to fulfil the

aspirations of human rights, businesses need to engage not just with the law or with the bare minimum, but with the spirit of human rights protection, which is aimed at the upholding of the inherent dignity and worth of *every* individual that comes across their path.

Chapter 1 – Introduction

1.1. Context

The area of human rights and business is attracting increased attention. The need to develop frameworks and guidelines for states and corporations in relation to the protection of human rights has been a central focus of the United Nations in recent years.

At the international level, a leading initiative in this area is the work conducted under the leadership of Professor John Ruggie, the United Nations Secretary General Special Representative on Business and Human Rights. Ruggie has notably developed a set of *Guiding Principles* for the implementation of the United Nations *Protect, Respect and Remedy Framework*. The UN Human Rights Council endorsed the *Guiding Principles* in June 2011.¹ This represents a key moment for the area of business and human rights. Yet, the *Framework* and the *Guiding Principles* establish broad standards which, in themselves, may be insufficient for immediate use. Governments, businesses and civil society are demanding precise guidance.

In the UK context, the report published by the Parliamentary Joint Committee on Human Rights in November 2009 is one of the key publications on the issue.² This in-depth report examines different aspects of the current issues regarding business and human rights and also makes several recommendations. One of the central recommendations of the Joint Committee is that “the Government should ensure that adequate guidance is available on:

- the scope of the HRA 1998, including guidance for private bodies performing public functions on how to meet their duty to act in a way compatible with the European Convention on Human Rights;
- the wider implications of human rights law for business;
- a human rights based approach to business; and
- standards which businesses should apply when doing business at home and abroad.”³

Overall, the Parliamentary Joint Committee called for the development of clearer standards to guide and support businesses.

Another important initiative in the UK context has been undertaken by the Ministry of Justice under its Private Sector and Human Rights Project. The

project “aims to establish an understanding of the engagement of UK businesses with human rights within their domestic operations”, and whether “a need for further guidance for businesses exists on how to embed human rights within their UK practices”.⁴ This has led to the publication of a report on the perception of human rights by UK based businesses.⁵

Finally, in October 2010, the Equality and Human Rights Commission established a Working Group on Business and Human Rights with the key aim of encouraging businesses to integrate human rights into their business practices. The Working Group has concluded that a review and evaluation of existing guidance on business and human rights should be undertaken before any new guidance is produced in order to avoid unnecessary duplication. It is hoped that the present report will inform the Working Group’s work.

1.2. Aims of the report

This report aims to:

- List the existing law, standards and guidance in the area of business and human rights, highlighting gaps and overlaps between them, and reviewing key initiatives;
- Assess selected UK statutes against a human rights framework; and
- Produce practical guidance for UK businesses in the area of business and human rights.

1.2.1. List existing law, standards and guidance

The list of all the different initiatives, statutes and treaties in the growing area of business and human rights is substantial. This may give the impression that UK businesses are expected to comply with a wide and complex set of international and domestic regulations. However, there is a great deal of overlap between the different initiatives. Therefore, for the sake of clarity, only the key initiatives are thoroughly reviewed in the core part of the report while the rest are identified and briefly presented in the Annex.

1.2.2. Assess selected UK statutes against a human rights framework

One of the key findings of the Ministry of Justice’s report is that while “many UK businesses do not explicitly engage with the topic of human rights, (...) they do however address human rights topics such as equality [and] non-discrimination”.⁶ However, due to a lack of “human rights literacy”,⁷ businesses

find it hard to understand the human rights aspects of existing law and policies. Many businesses are unsure as to how areas such as corruption or even employment law (seen as issues within the government's mandate) could relate to any practicable human rights framework, and may be reluctant to use the language of human rights.⁸

In order to demystify the relationship between UK businesses and human rights, one of the aims of this report is to emphasise the human rights aspects in selected UK statutes, to show that businesses already engage with human issues, and that they are not simply concerns for government.

1.2.3. Produce practical guidance

While the research entails some inevitable references to legal technicalities, one of the principal objectives of the report is to provide a practical and accessible guidance for UK based businesses.

1.3. Scope of the study

1.3.1. Which businesses?

The guidance set out in this report is aimed at all UK businesses, whether they are large multinational corporations or smaller domestic businesses. However, in drafting the guidance, particular attention was given to SMEs, as defined by the European Commission in 2003.⁹ It is estimated that over 99% of UK businesses are SMEs by this definition and that 97 per cent of all businesses employ fewer than 20 people.¹⁰

In recent years, the guidance on business and human rights produced at the international level seems directed at large multinational companies, leading to a situation where many UK businesses view human rights as being largely a “overseas problem” that does not warrant any “special action” in the UK.¹¹ This has created a false preconception that human rights guidance only applies to large and multinational corporations.

While it is certain that size matters when it comes to human rights guidance, Professor Ruggie has highlighted that:

The basic principles of respecting human rights ought to apply to everybody but the modalities of implementation would surely differ. A company that has an annual turnover that is equivalent

to the GDP of 80% of the countries of the world has different capacities and also a different impact than a company that employs 50 people and operates in Manchester or wherever. So the modalities are different depending on the size and scope and impact of the company, but the basic principles ought to be similar.¹²

The UK Parliamentary Joint Committee on Human Rights report concluded that:

Human rights principles are relevant to businesses of any size or type, although their detailed application may differ from case to case. Policy, advice or guidance on human rights should take into account the diverse nature of the UK business community, including small business and consumers of small business services.¹³

More practically, within such debate it has been argued that the increased awareness and activity on the part of states and large companies are likely to have a trickle down effect for small businesses. Thus:

Many large corporate consumers were beginning to require that their suppliers meet the requirements of their own human rights codes of practice. Similarly, many consumers were beginning to place greater emphasis on ethical business practices. Combined, these changes were increasing the number of smaller businesses who were aware and engaged with human rights issues.¹⁴

One general concern often articulated in the context of SMEs in the developed world is that the scope of their operations is usually domestic and that they are therefore less exposed to human rights questions. However this argument is countered by the fact that SMEs are a diverse sector with many having considerable internationalised operations; and secondly that human rights violations by corporations can also occur at home.

Overall, it is clear that there is need to develop guidelines that are relevant to all businesses irrespective of size. In practice it is difficult to identify a single set of standards for all businesses (large and small, multinational or purely UK-based). This report attempts to bridge that gap by focusing on the core human rights standards that are relevant to all businesses, including SMEs, and by

proposing a set of guidelines that can be followed by businesses irrespective of their size and range of operations.

1.3.2. Operating abroad or not?

There is need for guidance on the standards that businesses should apply when doing business at home and abroad. The review focuses on both standards, as arguably under human rights law businesses should not adopt a discriminatory approach to human rights: with one set of policies for operating abroad, and another for the domestic market. Ultimately, international human rights standards apply in all situations and meaningful guidance on human rights and business should encompass all business operations.

This approach does not run contrary to a practical approach allowing for distinctions on the reach of any given obligation. For example, one important area of human rights and business concerns the impact of businesses on the local communities. This includes, for example, the human rights obligation to respect local populations' access to water and food. It also includes the protection of indigenous peoples' land rights especially when these may be impacted by extractive industries. While this clearly concerns businesses operating abroad, the general human rights obligation of protecting the interests of the local community is also relevant for businesses operating in the UK. The rights that the local communities have abroad could also be relevant to the local communities based in the UK. This includes health and environmental standards relevant in the UK context.

Based on such approach, this review explores the human rights framework applicable to businesses operating both abroad and in the UK and, where appropriate, distinctions will be made. However, as a general rule, the guidance is based on a universalist approach to human rights law, without distinction. With this in mind, it would not be acceptable for businesses which rely on foreign suppliers to ignore the suppliers' human rights performances. It is expected that when the businesses do not directly control their suppliers, they should ensure that the latter have taken the practical steps asserted in the guidance. In other words, the standards identified in the report apply all the way down the supply chain and procedures should be in place to monitor compliance with the standards.

1.3.3. Binding or not?

In recent years, there has been a proliferation of norms, frameworks and guidance at the international and domestic levels that have variable legal force. Some international initiatives are entirely voluntary (e.g. the UN *Global Compact*), some are not voluntary (e.g. the *OECD Guidelines for Multinational Enterprises*) and apply to businesses irrespective of consent. Furthermore, some standards include human rights norms already embedded in UK legislation which clearly bind businesses (e.g. *Equality Act 2010*), and which can engage businesses in suits for breach of law.

The review demonstrates considerable overlaps between initiatives. Understandably, this is a source of confusion for businesses which may be discouraged to adopt a systematic human rights policy if they feel that this means complying with dozens of different standards, when in fact, different documents refer to the same good business practices. This (perceived) complexity has restricted change with businesses tempted to engage in selected so-called “Corporate Social Responsibility (CSR) initiatives” which may bring about positive outcomes but do not systematically tackle human rights risks.¹⁵ In parallel to the legal human rights environment, there has been a flourishing of CSR initiatives. There is often confusion and amalgamation between CSR and human rights obligations: the guidance aims at focusing on human rights. While CSR initiatives do include some form of human rights commitments, they generally remain vague on this matter.

What, then, should UK businesses do to respect human rights? The principle of ‘due diligence’ is in vogue to describe business obligation to respect human rights. Ruggie has highlighted that such due diligence represents the second element of the responsibility to respect human rights (after the legal obligation which fall on to states). Due diligence can be described as the social or moral responsibility on businesses to “do no harm” to the rights of others guaranteed by international human rights law. From a human rights perspective, this includes the impact that businesses can have on the larger category of stakeholders, including consumers, local communities but also includes other business involved in the supply chain.

Many businesses struggle to grasp the demarcation between binding and voluntary initiatives and, quite simply, call for straightforward practical guidance which does not get into legalistic detail. This report aims to help businesses which strive to ‘do the right thing’ in their endeavour.

With this in mind, Chapter 3 lists international and domestic law, standards and voluntary initiatives that are relevant to business and human rights. It begins with a detailed explanation of the differences between law, standards, guidance and mere voluntary initiatives. Then, for each area (discrimination, labour rights, etc.) law, standards and voluntary initiatives, international and domestic, are quoted so as to provide the reader with the actual text, and isolated in boxes for more clarity. After the standards have been spelled out, a final sub-section called “practical guidance” presents guidance for that particular area, inspired from the law, standards and voluntary initiatives, and drafted by the authors, sometimes simply repeating the standards, sometimes just keeping the idea but rephrasing it with their own words. Every effort was made to make the guidance accessible to non-specialists and, overall, business-friendly.

Chapter 5 brings together the practical guidance drafted in the six key areas, without mentioning the sources. In itself, it is a proposed set of basic guidelines. Readers who are interested in more detail should refer to Chapter 3.

1.4. Structure of the report

The report is divided into four further chapters. Chapter 2 engages in a discussion about whether businesses are bound by international law, and reviews the principal instruments that are shaping the current debate on human rights and business. The aim of this chapter is to provide a comprehensive review of the instruments most relevant to UK businesses in the area of business and human rights and to outline existing gaps. As explained above, Chapter 3 lists human rights and business standards and proposes practical guidance for UK businesses in six key areas. Chapter 4 focuses on the specific issues of businesses working in the area of public services and public procurement.

Chapter 5, the concluding chapter, brings together the guidance in the six key areas in one single one-size-fits-all list and suggests questions for future research in business and human rights.

Chapter 2 – Review of key initiatives in business and human rights

The *Universal Declaration of Human Rights*, adopted in 1948, calls for “every organ of society” to engage with human rights. While it is imprecisely worded and, as such, of little direct use to business, it has great symbolic value, represents a common universal standard to be achieved, and can help guide business toward human rights compliance. The following articles are directly relevant in the context of business and human rights:

- Article 2: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”;
- Article 23(1): “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment”;
- Article 23(3): “Everyone who works has the right to just and favourable remuneration”;
- Article 24: “Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay”; and
- Article 25: “Everyone has the right to an adequate standard of living for the health and well-being of himself/herself and family”.

The commonly accepted, though not uncontroversial, position is that the binding human rights instruments adopted after 1948 and the treaties pertaining to labour rights adopted both before and after the Second World War within the International Labour Organisation (ILO) do not *directly* bind business, not even multinational corporations operating in more than one country.¹⁶ However, this is not to say that international law is entirely irrelevant to business. Indeed, international human rights law provides a useful set of standards which can be used to measure businesses’ human rights performance.

The UK is a party to several international treaties that may be of relevance to business and human rights. This means that the UK has signed and ratified these instruments of international law and, like other states parties to them, is bound by their provisions at the international level. These treaties include the *International Convention on the Elimination of All Forms of Racial Discrimination*, the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Elimination of All Forms of Discrimination Against Women*,

the *Convention Against Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment*, the *Convention on the Rights of the Child* and the *Convention on the Rights of Persons with Disabilities*. While not directly relevant to businesses, these conventions can be used as benchmarks. For example, Article 5 of the *International Covenant on Economic, Social and Cultural Rights* states that remuneration should provide all workers, as a minimum, with: “a decent living for themselves and their families in accordance with the provisions of the present Covenant”. This means that states parties, such as the UK, have to ensure that UK businesses, including SMEs, provide their workers with such decent living.

Most of the human rights guaranteed by these instruments are also guaranteed by domestic legislation which clearly binds UK businesses. Therefore, a detailed analysis of all of these treaties is of little use for the purpose of this report. However, the *European Convention on Human Rights*, incorporated into UK law through the *Human Rights Act*, will be examined more closely since it raises numerous questions from the business world, especially from businesses carrying a “public function” service (see Chapter 4).

The guidance was prepared based on a systematic review of the main existing initiatives in the area of business and human rights (all of which are listed and briefly described in the Annex. However, six initiatives and statutes were analysed in more detail than others to prepare the guidance:

1. The *International Labour Organisation (ILO) Core Conventions*;
2. The *OECD Guidelines for Multinational Enterprises*;
3. The *Protect, Respect and Remedy Framework and Guiding Principles*;
4. The *UN Global Compact*;
5. The *Human Rights Act 1998* (European Convention on Human Rights); and
6. The *Equality Act 2010*.

They were chosen based on several criteria: status, legitimacy, prominence and relevance to the UK context. In the present chapter, each of them is analysed against the following template:

- Who produced it?
- What are the key subjects covered?
- Who is it aimed at (e.g. governments, businesses, specific sectors, etc.)?
- What specific industries/sectors are highlighted in the guidance?
- What is its legal status (i.e. is it binding or voluntary?)

- How suitable is the guidance for SMEs based in the UK, as well as large companies with overseas operations?

2.1. International Labour Organisation Core Conventions

The ILO is the world's leading institution in the area of labour standard setting and overseeing. Founded in 1919, it has a unique tripartite structure in which workers, employers and governments are equally represented in standard setting, policies and specific programmes. The ILO is responsible for the drafting of more than 180 conventions for states to sign and ratify. Among these, eight set out basic rights in the workplace and are known as the *Core Conventions*. Due to the central role the ILO has played in the protection of workers for almost a century, the Core Conventions certainly deserve some attention in the present Chapter.

These eight conventions (No. 29, 87, 98, 100, 105, 111, 138 and 182) guarantee "core labour rights standards", which are a set of four internationally recognised basic rights and principles at work: freedom of association and the right to collective bargaining; the elimination of forced labour; the elimination of child labour; and the elimination of discrimination in employment. The standards and what they entail for businesses are presented in Chapter 3.

The ILO conventions are international treaties and, as such, they only formally bind states (see above). However, because of the subject-matter of the Conventions (labour rights), they are of particular relevance to UK businesses, irrespective of size and international scope.

2.2. OECD Guidelines for Multinational Enterprises

The Organisation for Economic Co-operation and Development (OECD) was established in 1961. It is an international organisation of 34 states whose membership include the world's most advanced countries but also some emerging countries.¹⁷ The *OECD Guidelines for Multinational Enterprises* set out recommendations on responsible business conduct. They are of particular interest because until the adoption of Ruggie's *Protect, Respect, Remedy Framework* in 2008 (see 2.3. below) the *Guidelines* were the leading international initiative in the area of business and human rights and the only one at international level aimed *directly* at companies. First issued in 1976 and revised in 2000 and 2011 they were prepared by governments but are addressed to multinational corporations.

The *Guidelines* encourage companies to respect the human rights of those affected by their operations. The 2011 version contains a new chapter on human rights and still includes a chapter on employment and industrial relations. The *Guidelines* stress the importance of companies not resorting to bribery or encouraging corruption. On supply chains, the guidelines recommend that enterprises, “encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the *Guidelines*”.¹⁸

The *Guidelines* are not binding. Yet, their implementation does not depend entirely on companies’ free will. Compliance with the voluntary standards identified in the *Guidelines* is monitored by National Contact Points (NCPs). In the UK, the NCP is led by the Department for Business, Innovation and Skills (BIS) in close cooperation with the Department for International Development (DFID) and the Foreign and Commonwealth Office (FCO). The NCP is a non-judicial mechanism for individuals who may have a complaint against a UK company acting abroad. The *Guidelines* are not directly relevant for businesses who only operate in the UK.

There has been some criticism of the work of the UK NCP, notably that it lacks independence from government, that there is a lack of guidance for businesses on the standards to be met, and that they entail neither sanctions against businesses, nor remedies for individual victims.¹⁹ The government has taken such criticism on board and has published the result of an initial review of the NCP in January 2009. It concluded that the “NCP’s performance [had] significantly improved since the revamp (...) although there remains room for improvement”. It considered that limited resources remained a risk for the NCP and that higher priority should be given to promotion of the *Guidelines*, as opposed to the processing of complaints.²⁰

On this issue, the UK Joint Parliamentary Committee concluded:

It is unacceptable for the Government not to have a strategy in place to deal with companies subject to negative final statements by the UK NCP. The credibility of findings of the UK NCP would be enhanced considerably if the Government had a clear and consistent policy on its response to final statements. We recommend that such a policy should be drawn up and disseminated widely.²¹

Academics have also criticised the NCP system as not having enough teeth,²² among other shortcomings.²³ Jernej Letnar Čeranič makes a series of proposals for reform of the NCP system and the *Guidelines* in general. One of them, specifically on NCPs, is the creation of a national ombudsman for human rights and business to supervise the work of the NCP. The ombudsman

would represent the interest of the public by investigating and addressing complaints by anyone against the work of respective NCPs. The ombudsman offers an alternative means for holding them accountable, since NCPs are part of the public administration and therefore within its jurisdiction. On the other hand, such proposal may also seem overly bureaucratic when it would perhaps be better to change the internal workings of the NCPs rather than adding an extra layer.²⁴

2.3. Protect, Respect, Remedy Ruggie Framework 2008 and Guiding Principles 2011

In 2005, the UN Secretary General appointed Professor John Ruggie as his Special Representative on human rights and transnational corporations and other business enterprises. In June 2008, after three years of work and worldwide consultations with various stakeholders, he presented the *Protect, Respect, Remedy Framework* to the United Nations Human Rights Council which endorsed it at his behest. The *Framework* is aimed both at governments and at businesses of all sizes, not only multinational corporations.

The *Framework* is based on the argument that international human rights standards are not binding on corporations as such, but that, nevertheless, states, and in particular the states of incorporation of multinational corporations, are under an international obligation to ensure such corporations do not violate fundamental human rights when operating domestically or abroad (*Protect*). Additionally, corporations themselves must respect human rights, despite not being under an internationally-based duty to do so, which means acting with due diligence to avoid infringing on the rights of others, and addressing harms that do occur (*Respect*). Finally, both states and companies must ensure that effective grievance mechanisms, both judicial and non-judicial, are available for victims of abuses (*Remedy*).

Arguably, the corporate responsibility to respect is the area where the Framework provides the most added value. It is one of the first international initiatives aimed directly at businesses. Such responsibility is meant to apply

across business activities (domestically and abroad) and in businesses' relationships with third parties (business partners, clients, communities,...). Companies may not be aware of possible human rights risks in their activities which is why the companies' due diligence should be "based on a statement of commitment to respecting rights and supporting policies"²⁵ and "include assessing human rights impacts, integrating respect for human rights across relevant internal functions and processes, and tracking as well as communicating performance".²⁶

In June 2011, the UN Human Rights Council endorsed John Ruggie's *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. In Ruggie's words,

The Guiding Principles' normative contribution lies not in the creation of new international law obligations but in elaborating the implications of existing standards and practices for States and businesses; integrating them within a single, logically coherent and comprehensive template.²⁷

Guiding Principle 11 sets out the basis of the corporate responsibility to respect: "Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved". Guiding Principle 12 suggests that companies must respect "at a minimum", "the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work", which encompasses the eight ILO core Conventions. The *Guiding Principles* also refer to specific policies and processes for companies to ensure that they act with due diligence in the area of human rights.²⁸ One of them is a policy statement on human rights, which ought to be "approved at the most senior level of the business enterprise" and "communicated internally and externally to all personnel, business partners and other relevant parties".²⁹ Where relevant, human rights impact assessments should be conducted (Guiding Principle 18), the findings of which should be integrated in the companies' processes (Guiding Principle 19). Later on, businesses should "track the effectiveness of their response" (Guiding Principle 20) and communicate on their human rights records (Guiding Principle 21).

Although smaller businesses may find it difficult to adopt such policies, the *Framework* and *Guiding Principles* are aimed at all types of enterprises and not only multinationals as mentioned in Guiding Principle 14.

2.4. The UN Global Compact

The *Global Compact* is a practical framework for the development, implementation, and disclosure of sustainability policies and practices based on ten principles, which are themselves derived from: the *Universal Declaration of Human Rights*, the *ILO Declaration on Fundamental Principles and Rights at Work*, the *Rio Declaration on Environment and Development*, and the *UN Convention against Corruption*. The principles of relevance for human rights at large are that businesses should:

Principle 1: Support and respect the protection of internationally proclaimed human rights;

Principle 2: Make sure that they are not complicit in human rights abuses;

Principle 3: Uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: Eliminate all forms of forced and compulsory labour;

Principle 5: Achieve the effective abolition of child labour;

Principle 6: Eliminate discrimination in respect of employment and occupation;

Principle 10: Work against corruption in all its forms, including extortion and bribery.

Companies join the *Global Compact* on an entirely voluntary basis and the framework is non-binding. For administrative constraints, companies with less than ten direct employees (micro enterprises) cannot officially join the framework. However, the principles are arguably relevant for all UK businesses, however small, even if they cannot join.

Once they have joined, companies commit to introduce changes in the way they conduct their daily operations and to issue an annual Communication on Progress (COP). This is a report in which the company publicly discloses progress made in implementing the ten principles. If they fail to provide a COP, the participating companies will be exposed as non-communicating or inactive. If they fail to communicate progress for two years in a row they are de-listed and their name is published. In short, the UN *Global Compact* sets up a loose framework, with limited consequences for companies which do not follow the principles. In 2007, Surya Deva identified five major limitations of the Global Compact: uncertainty about what it seeks to achieve (attempted regulation or simply forum to discuss these issues?); “vague principles and concepts”; inefficiency of the mechanism of COP; “lack of verification and independent monitoring”; and, in some cases, “misappropriation of the Compact’s image”.³⁰

Despite these limitations, the *Global Compact* provides an interesting set of principles and represents one of the first attempts to engage businesses with human rights issues.

2.5. The Human Rights Act (1998)

The *Human Rights Act* 1998 (HRA) came into force on 2 October 2000. From that date, the civil, political, economic and social rights and freedoms guaranteed under the *European Convention on Human Rights* were incorporated into domestic law. This means that rights given under the Convention may be relied upon directly in UK courts and tribunals. The HRA provides protection for fundamental human rights such as the right to life, fair trial and freedom of thought, conscience and religion, and freedom of assembly and association.

It is now unlawful for any public authority to act in a way that is incompatible with the HRA. The government accompanies all new legislation with a statement that indicates conformity with the Convention and the courts may make Declarations of Incompatibility if they find existing legislation does not conform with it. In principle, the HRA concerns relationship between public authorities and citizens, however any business engaging in the delivery of public services could also be concerned. The HRA is thus directly relevant to businesses (independent of size) who are conducting business of a 'public nature' and carrying out a 'public function', such as running a care home or a prison (see Chapter 4).

The Ministry of Justice has produced a guide to the HRA as well as additional guidance, see: www.justice.gov.uk/guidance/humanrights.htm.

More generally, the Government has produced a number of information booklets on the operation of the HRA. Existing guidance generally focuses on the actions of public authorities, but some of the following guides provide more focus on the potential impact on the private sector:

- The Legal Action Group, *Human Rights Act Toolkit* (2003).
- The Lord Chancellors Department, *Human Rights Act 1998 (Study Guide 2nd ed. October 2002)*.
- The British Institute of Learning Disabilities: *Easy Guide to the Human Rights Act* (2002).
- Local Government Association, *Deciding Rights – applying the Human Rights Act to good practice in local authority decision-making*.

2.6. The Equality Act (2010)

The *Equality Act* brings together nine separate pieces of legislation into one single act simplifying the law and strengthening it in important ways to help tackle discrimination and inequality. The Act harmonises and replaces previous legislation (such as the *Sex Discrimination Act* 1975, the *Race Relations Act* 1976 and the *Disability Discrimination Act* 1995).

The Act protects people from being treated less favourably because they have a protected characteristic. The relevant protected characteristics in employment are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race (including ethnic or national origins, colour and nationality), religion or belief (including lack of belief), sex, and sexual orientation. Since the idea of human rights is based on the premise that *all* human beings have rights, a piece of legislation which seeks to ensure that certain individuals or groups are not treated less favourably than others can safely be described as a human rights document, although the phrase “human rights” is nowhere to be found in the Act itself.³¹

Moreover, the Act supports positive action provisions by ensuring that it is not unlawful discrimination to take special measures aimed at alleviating disadvantage or under-representation experienced by those with any of these characteristics. Again, the fact that such measures to ensure *real* equality are tolerated and even encouraged allows us to view the *Equality Act* as a human rights piece of legislation.

2.7. Gaps

The absence of an international treaty on human rights and business can be viewed as a clear gap. A treaty could include the obligation for states to take measures to encourage businesses to take on board Ruggie’s responsibility to protect. However, a specific treaty would not increase the protection of human rights since binding international law does not *directly* apply to businesses and enforcement mechanisms are lacking. Moreover, such a treaty would only attract interested states anyway and, in this respect, may be of limited added value. Instead, encouraging the dissemination and use of the *Framework* and *Guiding Principles* may be less costly and more efficient, at least for the time being. Perhaps a treaty could be envisaged at a later stage.

As shown in Chapter 3, UK domestic law provides a satisfactory framework for the protection of labour rights, the protection against discrimination, the

protection of migrant workers, the fight against corruption of government officials overseas, etc. However, UK domestic law and policies have not yet incorporated most of Ruggie's suggestions with regard to, for example, businesses' human rights policies and human rights risk assessments. The *Guiding Principles* are recent and it is reasonable that the current government has not acted upon them yet. Moreover, the UK is under no obligation to do so given that the *Framework* and *Guiding Principles* are not international treaties. Keeping in mind these two elements, it is nevertheless of interest to note that the existing legislation related to human rights and business (*Human Rights Act* 1998, *Equality Act* 2010, etc.) puts in place tools to react to possible violations. However, it does not necessarily encourage businesses proactively to engage with human rights issues through the systematic use of human rights impact assessments for example.

Interestingly, the government's portal on starting up a business (<http://www.businesslink.gov.uk/bdotg/action/layer?r.s=tl&topicId=1073858805>) raises awareness on the human rights impacts of businesses and ethical trading but the information does not appear upfront. It could be revised to include a proper "business and human rights" section.

Chapter 3

Human Rights and Business: Standards and Practical Guidance

The selected initiatives reviewed in Chapter 2 and the more extensive list of initiatives contained in the Annex establish human rights standards for businesses to follow. A systematic review of these initiatives has allowed the identification of six distinct areas where businesses can play a direct role in the protection and advancement of human rights. Each of these areas, listed below, forms a section in this chapter:

1. Discrimination
2. Labour rights
3. Privacy
4. Customers and communities
5. Transparency
6. Human trafficking

The first two areas identify rights in the workplace, touching upon employment law: discrimination and labour rights. The latter include freedom of association and the right to collective bargaining; forced labour; child labour; working conditions/health and safety; working hours; and minimum wages.

Moreover, the extraordinary developments of information technology in the past two decades have created new challenges for the protection of human rights in the workplace in the area of privacy. The authors of *The Private Sector and Human Rights in the UK* have pointed out that businesses readily mention privacy as one of the areas where human rights difficulties are likely to arise.³²

In preparing this report, it quickly became clear that the guidance would be incomplete if it was limited to rights within the workplace. The relationships between businesses and third parties such as customers and affected communities entail significant human rights risks and guidance in this area is relevant to UK businesses.

Transparency is one of the core values in business ethics.³³ Ideally, businesses would openly engage with human rights issues, and, where required, report on their human rights performance. Unfortunately, within certain businesses, the idea that the phrase “human rights” should not even be publicly mentioned so as not to attract attention to possible problems is widespread. Transparency was selected as an area for this report in order to raise awareness on the

advantages that businesses may gain in addressing human rights issues in a systematic and visible way. An extreme consequence of a lack of transparency in business operations is the practice of bribery that the UK has taken a significant step in addressing with the adoption of the *Bribery Act 2010*. These two areas are therefore dealt with together.

Finally, human trafficking is an area in which businesses, especially those requiring a large workforce, may get indirectly involved in, often unknowingly. It raises issues that go beyond mere violations of employment law. Therefore the existing standards in this area deserve to be reviewed separately.

Each of the six sections focuses on aspects that are the most relevant to businesses, and is further sub-divided as follows:

- (a) A short overview;
- (b) International standards;
- (c) Domestic standards; and
- (d) Suggested practical guidance inspired from these standards.

What are “international standards” and “domestic standards”?

International human rights treaties, as well as the ILO Conventions, constitute *international law* and create direct international obligations for states to fulfil. Although international law only directly binds states and not businesses, these Conventions tend to be ratified by states around the world, which means there is a wide consensus, at least at state level, around their contents. As such, their legitimacy is greater than that of other initiatives as, for example, *The Global Social Compliance Programme Reference Code* which is international in scope but entirely voluntary or, even, the *OECD Guidelines for Multinational Enterprises*, which constitute guidance as opposed to law. The *Guidelines* are not an international law instrument because they are not embedded into an international treaty and are not *legally* enforceable. Yet, they are not entirely voluntary since they are meant to guide businesses and to provide standards to assess their conduct.

To indicate this diversity among international standards, and when relevant, the sub-section on international standards is further divided into three elements: international law, international guidance and voluntary initiatives. None of them is directly binding on businesses but they are all meant to serve as benchmarks. By contrast, all the domestic standards mentioned are embedded in statutes or regulations and are binding on UK businesses, as domestic legal entities.

Both types of standards are quoted literally and are presented in boxes for more clarity.

About the “practical guidance”

The practical guidance is inspired from the law, standards and voluntary initiatives in each area. It is meant to be a guide for businesses to follow and is not drafted in legalistic terms. Some of the guidance is inspired from, and in some cases is identical to, standards presented before and set out by organisations unrelated to the authors of the present report. In other areas where existing guidance is limited, the authors have attempted to create new guidance that is accessible to businesses including SMEs. The guidance is aimed at UK businesses, whether operating only in the UK or abroad. Moreover, all UK businesses should take steps to ensure that their providers along the supply chain follow the guidance, even when suppliers are not mentioned in the guidance.

The added value of the practical guidance proposed in this report is that it covers areas that are most relevant to UK businesses (especially SMEs) in a single document, irrespective of whether the standards are binding or not. In parallel, and to avoid confusion, information about legal obligations of UK businesses under domestic UK law is also made available and can be found under “domestic standards” for each area.

3.1. Discrimination

Freedom from discrimination is one of the key principles of human rights law and is guaranteed in all the main human rights instruments. Generally, freedom from discrimination gives every person a right to equal treatment with respect to access to services, goods and facilities, without discrimination on grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.

Under human rights law, freedom from discrimination encompasses two aspects: a negative element signalling that nobody should be discriminated against, and a positive element requiring active engagement against discrimination. This translates into a dual obligation for businesses to avoid acting in a discriminatory manner, and to put in place positive mechanisms to eradicate discrimination.

3.1.1. International standards

International labour law prohibits discriminatory treatment in the workplace on the basis of colour, sex, religion, political opinion, national extraction or social origin. *The Global Social Compliance Programme Reference Code* (please see below and/or Annex) goes further and prohibits discrimination on the basis of “gender, age, religion, marital status, race, caste, social background, diseases, disability, pregnancy, ethnic and national origin, nationality, membership in worker organizations including unions, political affiliation, sexual orientation, or any other personal characteristics”. The Code thus provides wide protection and is an example of good practice. Moreover, the *OECD Guidelines for Multinational Enterprises* protect employees who report violations of non-discriminatory treatment to management or the authorities, though this is only applicable to multinational corporations. The documents that follow contain more specific provisions on non-discrimination.

3.1.1.1. International law

The following ILO Conventions set anti-discrimination standards in employment and are part of the so called eight Core Conventions which guarantee core labour rights standards. The other three are freedom of association and the right to collective bargaining, the elimination of forced labour and the elimination of child labour. They are explored further in this report.

Discrimination (Employment and Occupation) Convention, 1958 (ILO Convention No. 111)

Article 1(1): For the purpose of this Convention the term discrimination includes (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

Article 2: Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

Equal Remuneration Convention, 1951 (ILO Convention No. 100)

Article 2: Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

Right to Organise and Collective Bargaining Convention, 1949 (ILO Convention No. 98)

Article 1(1): Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment (2) Such protection shall apply more particularly in respect of acts calculated to (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

3.1.1.2. International guidance

The *OECD Guidelines for Multinational Enterprises* are directly addressed to corporations and, although non binding, claims can be made against UK corporations not respecting them before the UK National Contact Point (please see Chapter 2 for details). They contain two provisions in the area of discrimination.

OECD Guidelines for Multinational Enterprises

II. 9: Enterprises should refrain from discriminatory or disciplinary action against employees who make *bona fide* reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the *Guidelines* or the enterprise's policies.

V. 1. e): Enterprises should not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.

3.1.1.3. Voluntary initiatives

The following initiatives are entirely voluntary and businesses are free to join them or not. Arguably, the standards they set are relevant even for businesses which have decided not to join the initiatives because since they are directly addressed to businesses, they tend to be worded in a business-friendly way.

UN Global Compact

The Global Compact is a United Nations initiative. It is a practical framework for the development, implementation, and disclosure of sustainability policies and practices based on ten principles (please see Chapter 2 for more detail). Principle 6 sets an anti-discriminatory standard as follows: "the elimination of discrimination in respect of employment and occupation".

Ethical Trading Initiative Base Code

The Ethical Trading Initiative is an alliance of retail companies, trade unions, charities and campaigning organisations that work together to improve working conditions in global supply chains. The initiative is global, but being UK-based it also contains some specific guidance for UK-based businesses. Regarding the UK market, one of the central aims of the initiative is to ensure that the working conditions of workers producing for the UK market meet or exceed international labour standards. Basing itself on the ILO Conventions, the initiative has adopted the Ethical Trading Initiative Base Code, which contains one provision on non discrimination.

Ethical Trading Initiative Base Code

7. No discrimination is practiced. 7.1 There is no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership or political affiliation.

Global Social Compliance Programme Reference Code

The Global Social Compliance Programme (the GSCP) is a group of companies that have made the commitment to respect human rights. The aim of the programme is to harmonise existing efforts in order to deliver a shared, global and sustainable approach for the continuous improvement of working and environmental conditions across categories and sectors in the global supply chain. The reference code contains a detailed provision on discrimination.

Global Social Compliance Programme Reference Code

Discrimination, harassment and abuse

4.1 Suppliers shall respect equal opportunities in terms of recruitment, compensation, access to training, promotion, termination or retirement.

4.2 Suppliers shall not engage in, support or tolerate discrimination in employment including recruitment, hiring, training, working conditions, job assignments, pay, benefits, promotions, discipline, termination or retirement on the basis of gender, age, religion, marital status, race, caste, social background, diseases, disability, pregnancy, ethnic and national origin, nationality, membership in worker organizations including unions, political affiliation, sexual orientation, or any other personal characteristics.

4.3 Suppliers shall treat all workers with respect and dignity.

4.4 Suppliers shall base all terms and conditions of employment on an individual's ability to do the job, not on the basis of personal characteristics or beliefs.

4.5 Suppliers shall not engage in or tolerate bullying, harassment or abuse of any kind.

4.6 Suppliers shall establish written disciplinary procedures and shall explain them in clear and understandable terms to their workers. All disciplinary actions shall be recorded.

3.1.2. Domestic standards

Equality Act

The *Equality Act* is the key UK statute on issues of discrimination and inequality. It prohibits discrimination on the basis of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race (including ethnic or national origins, colour and nationality), religion or belief (including lack of belief), sex and sexual orientation. For more detail, please see Chapter 2.

3.1.3. Practical guidance

Business should not discriminate against their employees and customers, directly or indirectly, on the basis of: gender, age, religion, marital status, race, caste, social background, diseases, disability, pregnancy, ethnic and national origin, nationality, membership in worker organizations including unions, political affiliation, sexual orientation, or any other personal characteristics.

To ensure that employees and customers are not discriminated against, businesses need to adopt specific policies aimed at fostering a culture of respect for diversity, endorsed and followed up by management. A range of specific policies could be designed including training, a complaint procedure to report problems, or, the design of a system to deal with discriminatory treatment through sanctions.

3.2. Labour Rights

Labour standards at the international level have mainly been developed by the ILO through specific conventions and declarations which cover six main areas. Each of these areas forms a sub-section in this section:

1. Freedom of association and the right to collective bargaining;
2. Forced labour;
3. Child labour;
4. Working conditions/health and safety;
5. Working hours; and
6. Minimum wages.

3.2.1. Freedom of association and the right to collective bargaining

This is one of the key labour rights: workers should be given the opportunity to organise and form associations or trade unions to allow more effective negotiations with their employers through collective bargaining, which in turn has an impact on other labour rights, such as the right to decent wages.

The exercise of this right has been affected by recent “structural changes in employment”.³⁴ As noted by the ILO:

“Atypical work, agency labour and flexible types of employment relationship have implications for collective bargaining. In some cases, because of multiple contractual relations, it may be difficult to identify the real employer, or the workers may not be recognized within the same bargaining unit. Casualization, or the shift of employment from regular jobs to other types of employment such as contractual work, is leaving its mark. Practical difficulties in reaching and organizing these workers, most of whom are employed in small and medium-sized enterprises, have resulted in their limited collective bargaining coverage”.³⁵

3.2.1.1. International standards

3.2.1.1.1. International law

Freedom of Association and Protection of the Right to Organise Convention, 1948 (ILO Convention No. 87)

Article 2: Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Right to Organise and Collective Bargaining Convention, 1949 (ILO Convention No. 98)

Article 1(1): Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. (2) Such protection shall apply more particularly in respect of acts calculated to (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; (b) cause the dismissal of or otherwise prejudice a

worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

ILO Declaration on Fundamental Principles and Rights at Work 1998

Although this is not a treaty, the declaration is obligatory on all ILO states parties who have committed to respect and promote the principles and rights, whether or not they have ratified the corresponding conventions. As such, it sets minimum standards under which states should ensure that companies do not fall. One of these standards concerns freedom of association and collective bargaining and states that: "All [ILO member states] members, even if they have not ratified the Conventions in question, have an obligation (...) to respect, to promote and to realize, in good faith (...) freedom of association and the effective recognition of the right to collective bargaining".

3.2.1.1.2. International guidance

OECD Guidelines for Multinational Enterprises

V. 1 a) Enterprises should respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing;

b) Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment;

V 2. Enterprises should: a) Provide such facilities to workers' representatives as may be necessary to assist in the development of effective collective agreements. b) Provide information to workers' representatives which is needed for meaningful negotiations on conditions of employment.

V.3. Enterprises should promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern

V.7. Enterprises should, in the context of *bona fide* negotiations with workers' representatives on conditions of employment, or while workers are exercising a

right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer workers from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.

V. 8. Enterprises should enable authorised representatives of the workers in their employment to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

3.2.1.1.3. Voluntary initiatives

UN Global Compact

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Ethical Trading Initiative Base Code

Freedom of association and the right to collective bargaining are respected.

2.1 Workers, without distinction, have the right to join or form trade unions of their own choosing and to bargain collectively.

2.2 The employer adopts an open attitude towards the activities of trade unions and their organisational activities.

2.3 Workers representatives are not discriminated against and have access to carry out their representative functions in the workplace.

2.4 Where the right to freedom of association and collective bargaining is restricted under law, the employer facilitates, and does not hinder, the development of parallel means for independent and free association and bargaining.

Global Social Compliance Programme Reference Code

Freedom of association and effective recognition of the right to collective bargaining

3.1 Workers have the right to join or form trade unions of their own choosing and to bargain collectively, without prior authorization from suppliers' management. Suppliers shall not interfere with, obstruct or prevent such legitimate activities.

3.2 Where the right to freedom of association and collective bargaining is restricted or prohibited under law, suppliers shall not hinder alternative forms of independent and free workers representation and negotiation, in accordance with international labour standards.

3.3 Suppliers shall not discriminate against or otherwise penalise worker representatives or trade union members because of their membership in or affiliation with a trade union, or their legitimate trade union activity, in accordance with international labour standards.

3.4 Suppliers shall give worker representatives access to the workplace in order to carry out their representative functions, in accordance with international labour standards.

3.2.1.2. Domestic standards

Trade Union and Labour Relations (Consolidation) Act 1992

The Act defines the rights of individuals to belong to a trade union, and to participate in the activities of their trade union. The Act provides protection against discrimination on grounds of trade union membership and activities. For example:

- it is unlawful to refuse employment on grounds of trade union membership (section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992);
- it is unlawful to dismiss an employee on grounds of their trade union membership or activities (section 152 of the 1992 Act); and
- it is unlawful for an employer to penalise a worker (short of dismissal) on grounds of trade union membership or activities (section 146 of the 1992 Act).

These rights are all enforced through Employment Tribunals.

Employment Relations Act 2004

The *Employment Relations Act 2004* concerns collective labour law and trade union rights. The Act was adopted to modify the previous *Employment Relations Act* of 1999. The Act establishes the procedure for employers to recognise and collectively bargain with a trade union. The Act notably requires that union members are not subject to any detriment short of dismissal for attempts to organise and also establishes the principle of prohibiting any

blacklisting of union members. The Act also includes measures to improve the enforcement regime of the national minimum wage.

Employment Relations Act 1999 (Blacklists) Regulations 2010

Regulation 3(1) contains the general prohibition that 'no person shall compile, use, sell or supply a prohibited list'. A 'prohibited list' (i.e. a trade union blacklist) is defined in regulation 3(2) and contains two elements. First, it is a list that 'contains details of persons who are or have been members of trade unions or persons who are taking part or have taken part in the activities of trade unions...' (regulation 3(2)(a)). The second requirement is that the list must have been 'compiled' for a discriminatory purpose '... with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers' (regulation 3(2)(b)).

3.2.1.3. Practical guidance

Businesses should not hinder the right of all workers to the right of collective bargaining and the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing.

Businesses should not discriminate against workers on the basis of their membership of a trade union or an association. In particular, they should not:

- (a) make the employment of a worker subject to the condition that he/she shall not join a union or an association or shall relinquish trade union or association membership;
- (b) cause the dismissal of or otherwise prejudice a worker by reason of union or association membership or because of participation in union or association activities outside working hours or, with the consent of the employer, within working hours;
- (c) threaten to transfer the whole or part of an operating unit from the country concerned nor transfer workers from the enterprise's component entities in other countries in order to influence unfairly employers/workers negotiations or to hinder the exercise of a right to organise;
- (d) compile lists of workers who are/have been members of trade unions or associations with a view to use them for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers.

Businesses should promote friendly relationships with their employees and engage in open and constructive negotiations with representatives of

employees, trade unions or associations with a view to reaching agreements on employment conditions.

Businesses should facilitate such negotiations, for example by providing facilities to employee representatives as may be necessary to assist in the development of effective collective agreements and by providing information to employee representatives which is needed for meaningful negotiations on conditions of employment.

Businesses should not use agency labour or contractual work as a way to hinder the right to freedom of association and collective bargaining and should be aware of the difficulties these workers may face.

When businesses operate in countries where the right to freedom of association and collective bargaining is restricted under law, they should facilitate, and not hinder, the development of parallel means for independent and free association and bargaining.

3.2.2. Forced Labour

The right not to be subjected to forced labour is one of the core rights guaranteed by international labour law. Forced labour can take various forms and is not limited to situations of outright enslavement. In the UK context, the practice of forced labour often goes hand in hand with human trafficking. Hence persons who have been trafficked end up working under coercive conditions (see section 6 on human trafficking).

3.2.2.1. International standards

3.2.2.1.1. International law

Forced Labour Convention, 1930 (ILO Convention No. 29)

Article 1. 1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.

Article 2: For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

Abolition of Forced Labour Convention, 1957 (ILO Convention No. 105)

Article 1: Each Member of the ILO which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour (a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) as a method of mobilising and using labour for purposes of economic development; (c) as a means of labour discipline; (d) as a punishment for having participated in strikes; (e) as a means of racial, social, national or religious discrimination.

3.2.2.1.2. International guidance

OECD Guidelines for Multinational Enterprises

V 1. d) Enterprises should contribute to the elimination of all forms of forced or compulsory labour and take adequate steps to ensure that forced or compulsory labour does not exist in their operations.

3.2.2.1.3. Voluntary initiatives

UN Global Compact

Principle 4: the elimination of all forms of forced and compulsory labour;

Ethical Trading Initiative Base Code

1. Employment is freely chosen. 1.1 There is no forced, bonded or involuntary prison labour. 1.2 Workers are not required to lodge "deposits" or their identity papers with their employer and are free to leave their employer after reasonable notice.

The Global Social Compliance Programme Reference Code

Forced, bonded, indentured and prison labour

1.1 All work must be conducted on a voluntary basis, and not under threat of any penalty or sanctions.

1.2 The use of forced or compulsory labour in all its forms, including prison labour when not in accordance with Convention 29, is prohibited.

1.3 Suppliers shall not require workers to make deposits/financial guarantees

and shall not retain identity documents (such as passports, identity cards, etc.)

1.4 Bonded labour is prohibited. Suppliers shall not use any form of bonded labour nor permit or encourage workers to incur debt through recruitment fees, fines, or other means.

1.5 Indentured labour is prohibited. Suppliers shall respect the right of workers to terminate their employment after reasonable notice. Suppliers shall respect the right of workers to leave the workplace after their shift.

Red Flags: Liability Risks for Companies Operating in High-Risk Zones

Red Flags (please see Annex) is a website which lists a number of activities which can potentially incur human rights violations and which are therefore “red-flagged”. One of the activities listed is “Forcing people to work”. According to Red Flag, “companies using people working against their will through the threat or use of violence may face liability. The use of such labour by a joint venture partner or state security forces may also pose a liability risk”.

3.2.2.2. Domestic standards

Coroners and Justice Act 2009

The Coroners and Justice Act 2009 introduced a new offence of holding someone in slavery or servitude, or requiring forced or compulsory labour. The offence came into force on 6 April 2010 and applies in England, Wales and Northern Ireland.

Forced labour requires a level of coercion or deception far beyond that of a normal employment arrangement. Such levels of coercion or deception between the employer and the victim are usually beyond that which might be expected in a normal employment arrangement. The employer must know that the arrangement was oppressive and not truly voluntary, or must have turned a blind eye to that fact.

A number of factors may point to forced or compulsory labour. The kind of behaviour by the employer or employer's representative that might, of itself, amount to forced labour includes (but is not limited to):

- Violence or threats of violence;
- Threats against the worker's family;
- Threats to report the worker to the authorities, for example because of the worker's immigration status or offences they may have committed in the

- past;
- Withholding the person's documents, such as a passport or other form of identification;
 - Forcing the worker to live or remain in a particular area, perhaps in poor accommodation;
 - Debt bondage, where the victim is unable to pay off the debt;
 - Not paying agreed wages.

The NGO Anti-Slavery describes debt bondage, or bonded labour as:

“the least known form of slavery today, and yet it is the most widely used method of enslaving people. A person becomes a bonded labourer when their labour is demanded as a means of repayment for a loan. The person is then tricked or trapped into working for very little or no pay, often for seven days a week. The value of their work is invariably greater than the original sum of money borrowed”.³⁶

The Gangmasters (Licensing) Act 2004

This Act regulates agencies that place vulnerable workers in agricultural work, shellfish collecting and industries packing. The Act establishes the Gangmasters Licensing Authority (GLA). This body is responsible for setting up and operating a licensing scheme for labour providers in agriculture, shellfish gathering and associated processing and packaging sectors. Under Section 4 of the Act, a “gangmaster” is an individual or business that:

- supplies labour to agriculture, horticulture, shellfish gathering and food processing and packaging, commonly referred to as a labour provider,
- uses labour to provide a service in the regulated sector, for example harvesting or gathering agricultural produce, or
- uses labour to gather shellfish.

The Act includes a number of criminal offences. It is illegal to operate as a gangmaster without a licence, or use an unlicensed gangmaster. The GLA which is in charge of providing licences, as well as monitoring the enforcement of the Act, has established a precise list of criteria on how it delivers these.³⁷

These include references to general conditions relating to minimum wages, conditions of employment (health and safety) and contracts, but also contains

specific references to forced labour. The GLA will in particular check that a licence holder does not:

- restrict a worker's movement. There should be no debts between a licence holder and worker that prevent the worker freely seeking other employment. Workers must be free to work elsewhere without incurring, or fear of incurring, any other detriment,
- subject, or threaten to subject, a worker to any detriment because the worker has terminated or given notice to terminate any contract between the worker and the licence holder or the worker has taken up or proposes to take up employment elsewhere,
- retain identity papers, except when it is necessary to check a worker's entitlement to work in the UK, and then only until the check is complete, or
- force or coerce a worker to work against their will.

Likewise, a licence holder must not withhold or threaten to withhold the whole or part of any payment due to a worker in respect of any work they have done. Failure to respect these standards would lead to a licence being revoked with immediate effect. It is a criminal offence to use an unlicensed gangmaster under section 13 of the *Gangmasters (Licensing) Act 2004*.

3.2.2.3. Practical guidance

Businesses should not use forced or compulsory labour. Forced or compulsory labour means all work or service which is exacted from any person under the menace of any penalty or sanction and for which the said person has not offered himself or herself voluntarily.

Forms of forced labour include:

- (a) Bonded labour (where labour is demanded as a means of repayment for a loan);
- (b) Labour undertaken when violence or threat of violence against the worker or the worker's family is used by the employer or the employer's representative;
- (c) Labour undertaken because of threats used by the employer to report the worker to the authorities, for example because of the worker's immigration status or offences they may have committed in the past;
- (d) Labour undertaken while the employer is retaining the worker's identity papers;
- (e) Labour paid less than the agreed wage;

Businesses should ensure that workers are free to leave their positions after reasonable notice and respect the right of workers to leave the workplace after their shift. Workers should not be forced to live or remain in a particular area, e.g. in poor accommodation.

Businesses should not require workers to make "deposits" or lodge financial guarantees.

3.2.3. Child Labour

According to the ILO, "child labour is a violation of fundamental human rights and has been shown to hinder children's development, potentially leading to lifelong physical or psychological damage. Evidence points to a strong link between household poverty and child labour, and child labour perpetuates poverty across generations by keeping children of the poor out of school and limiting their prospects for upward social mobility."³⁸

3.2.3.1. International standards

3.2.3.1.1. International law

Minimum Age Convention, 1973 (ILO Convention No. 138)

Article 2: (3). The minimum age [for admission to employment or work] shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years. (4). Notwithstanding the provisions of paragraph 3 of this Article, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.

Article 3: (1). The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.

Worst Forms of Child Labour Convention, 1999 (ILO Convention No. 182)

Article 1: Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

Article 2: For the purposes of this Convention, the term *child* shall apply to all persons under the age of 18.

Article 3: For the purposes of this Convention, the term *the worst forms of child labour* comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

3.2.3.1.2. International guidance

OECD Guidelines for Multinational Enterprises

V 1. c) Enterprises should contribute to the effective abolition of child labour, and take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

3.2.3.1.3. Voluntary initiatives

UN Global Compact

Principle 5: the effective abolition of child labour

Ethical Trading Initiative Base Code

4. Child labour shall not be used

4.1 There shall be no new recruitment of child labour.

4.2 Companies shall develop or participate in and contribute to policies and programmes which provide for the transition of any child found to be performing child labour to enable her or him to attend and remain in quality education until no longer a child; “child” and “child labour” being defined in the appendices.

4.3 Children and young persons under 18 shall not be employed at night or in hazardous conditions.

4.4 These policies and procedures shall conform to the provisions of the relevant ILO standards.

Global Social Compliance Programme Reference Code

Child Labour

2.1 Suppliers shall comply with: i) the national minimum age for employment; ii) or the age of completion of compulsory education; iii) or any otherwise specified exceptions; and shall not employ any person under the age of 15, whichever is higher. If however, local minimum age law is set at 14 years of age in accordance with developing country exceptions under ILO Convention 138, this lower age may apply.

2.2 Suppliers shall not recruit child labour nor exploit children in any way. If children are found to be working directly or indirectly for the supplier, the latter shall seek a sensitive and satisfactory solution that puts the best interests of the child first.

2.3 Suppliers shall not employ young workers under 18 years of age at night, or in conditions which compromise their health, their safety or their moral integrity, and/or which harm their physical, mental, spiritual, moral or social development.

3.2.3.2. Domestic standards

Children and Young Persons Act 1933

Part II gives details for children within the employment field. Sections 18- 24 set out general details as to working hours, holidays and working during school term time. The main provisions governing children's employment are contained in section 18 which limits employment to children aged 13 or over and provides that no child under minimum school leaving age (MSLA) may be employed before 7 am or after 7 pm on any day or for more than 2 hours on any school day or Sunday. The legislation also requires that children must have a minimum of 2 weeks free from work during the school holidays. Children should not work for more than four hours without a break of at least one hour throughout the year.

Education and Skills Act 2008

This Act requires young people to continue to participate in education or training post-16 from 2013 (until 17 from 2013 and until 18 from 2015). This does not necessarily require individuals to stay at school: young people will still be able to work, provided they are learning as well. As this Act does not affect the

school leaving age it does not affect the meaning of 'child under the school leaving age' as far as the rules relating to the employment of children are concerned.

Apprenticeships, Children and Learning Act 2009

The Act introduces a statutory right to make a request in relation to study or training for employees in organisations with fewer than 250 employees. The right to make a request in relation to study or training was introduced for employees in organisations with 250 or more employees on 6 April 2010.

3.2.3.3. Practical guidance

Note

International standards set 14 years old as an absolute minimum but UK law allows businesses to employ children as young as 13 years old to work under strict conditions. However, the authors of this report suggest 15 years old as an absolute minimum.

Businesses should not employ children under 15 years of age and should not employ children under 18 years of age to carry out night work or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons.

If a child under 15 (or under 18 for the special types of work referred to above) is found to be performing child labour, businesses should develop or participate in and contribute to policies and programmes which provide for the transition of that child to enable her or him to attend and remain in quality education until no longer a child.

Business should make sure that none of their suppliers, subcontractors, recruitment agencies and labour brokers use child labour.

3.2.4. Working Conditions/Health and Safety

An important aspect of labour laws relates to the working conditions of the employees, they should not be expected to work under any conditions, putting their health and safety under unreasonable threat. Workers are entitled to minimum health and safety guarantees in the workplace and, if relevant, in their accommodation where provided by their companies.

3.2.4.1. International standards

3.2.4.1.1. International law

Occupational Safety and Health Convention, 1981 (ILO Convention No. 155)

Article 16

1. Employers shall be required to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health.

2. Employers shall be required to ensure that, so far as is reasonably practicable, the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken.

3. Employers shall be required to provide, where necessary, adequate protective clothing and protective equipment to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects on health.

Article 18: Employers shall be required to provide, where necessary, for measures to deal with emergencies and accidents, including adequate first-aid arrangements.

3.2.4.1.2. International guidance

OECD Guidelines for Multinational Enterprises

II. A.5): Enterprises should refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to human rights, environmental, *health*, *safety*, labour, taxation, financial incentives, or other issues.

V.4. c) Enterprises should take adequate steps to ensure occupational health and safety in their operations.

3.2.4.1.3. Voluntary initiatives

Ethical Trading Initiative Base Code

Working conditions are safe and hygienic:

3.1 A safe and hygienic working environment shall be provided, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Adequate steps shall be taken to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.

3.2 Workers shall receive regular and recorded health and safety training, and such training shall be repeated for new or reassigned workers.

3.3 Access to clean toilet facilities and to potable water, and, if appropriate, sanitary facilities for food storage shall be provided.

3.4 Accommodation, where provided, shall be clean, safe, and meet the basic needs of the workers.

3.5 The company observing the code shall assign responsibility for health and safety to a senior management representative.

The Global Social Compliance Programme Reference Code

Health and safety

Provisions under Health and Safety shall be further defined to cater for specific conditions and related hazards pertaining to different industries, in accordance with the relevant applicable Health & Safety principles:

5.1 Suppliers shall provide safe and clean conditions in all work and residential facilities and shall establish and follow a clear set of procedures regulating occupational health and safety.

5.2 Suppliers must take adequate steps to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment. Appropriate and effective personal protective equipment shall be provided as needed.

5.3 Suppliers shall provide access to adequate medical assistance and facilities.

5.4 Suppliers shall provide all workers with access to clean toilet facilities and to drinkable water and, if applicable, sanitary facilities for food preparation and storage.

5.5 Suppliers shall ensure that residential facilities for workers, where provided, are clean and safe.

5.6 Suppliers shall assign the responsibility for health and safety to a senior management representative.

5.7 Suppliers shall provide regular and recorded health and safety training to workers and management, and such training shall be repeated for all new or reassigned workers and management.

5.8 Suppliers shall provide adequate safeguards against fire, and shall ensure the strength, stability and safety of buildings and equipment, including residential facilities where provided.

5.9 Suppliers shall undertake sufficient training of workers and management in waste management, handling and disposal of chemicals and other dangerous materials.

3.2.4.2. Domestic Standards

Health and Safety at Work etc Act 1974

The *Health and Safety at Work etc Act 1974* is the primary piece of legislation covering work-related health and safety in the United Kingdom. It sets out the employer's responsibilities for health and safety at work.

Employment Act 2008 (and 2002)

The *Employment Acts* of 2008 and 2002 establish the legal framework regarding the right of the employees concerning compulsory disciplinary and grievance procedures, statutory maternity leave and new flexible working conditions.

3.2.4.3. Practical guidance

Businesses must provide workers with safe working conditions. To achieve this standard, they should:

- (a) ensure that the workplaces, machinery, equipment and processes under their control are safe and without risk to health;
- (b) ensure that the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken;
- (c) provide, where necessary, adequate protective clothing and protective equipment to prevent risk of accidents or of adverse effects on health.
- (d) provide, where necessary, for measures to deal with emergencies and accidents, including adequate first-aid arrangements.
- (e) ensure that workers receive regular and recorded health and safety training;
- (f) ensure access to clean toilet facilities and to potable water;
- (g) ensure that accommodation, where provided, is clean, safe, and meets the basic needs of the workers.

To ensure that these guidelines are followed, businesses should assign responsibility for health and safety to a senior management representative.

3.2.5. Working Hours

Excessive working hours can have a devastating effect on mental and physical health and workers are entitled to work a reasonable number of hours per day, to take breaks and occasional holidays.

3.2.5.1. International standards

3.2.5.1.1. International law

Universal Declaration of Human Rights

Article 24: Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Hours of Work (Commerce and Offices) Convention, 1930 (Convention No. 30)

Article 1: This Convention shall apply to persons employed in the following establishments, whether public or private:

- (a) commercial or trading establishments, including postal, telegraph and telephone services and commercial or trading branches of any other establishments;
- (b) establishments and administrative services in which the persons employed are mainly engaged in office work;
- (c) mixed commercial and industrial establishments, unless they are deemed to be industrial establishments.

2. The Convention shall not apply to persons employed in the following establishments:

- (a) establishments for the treatment or the care of the sick, infirm, destitute, or mentally unfit;
- (b) hotels, restaurants, boarding-houses, clubs, cafés and other refreshment houses;
- (c) theatres and places of public amusement.

Article 3: The hours of work of persons to whom this Convention applies shall not exceed forty-eight hours in the week and eight hours in the day, except as hereinafter otherwise provided.

Article 4: The maximum hours of work in the week laid down in Article 3 may be so arranged that hours of work in any day do not exceed ten hours.

3.2.5.1.2. Voluntary initiatives

Ethical Trading Initiative Base Code

6. Working hours are not excessive.

6.1 Working hours comply with national laws and benchmark industry standards, whichever affords greater protection.

6.2 In any event, workers shall not on a regular basis be required to work in excess of 48 hours per week and shall be provided with at least one day off for every 7 day period on average. Overtime shall be voluntary, shall not exceed 12 hours per week, shall not be demanded on a regular basis and shall always be compensated at a premium rate.

Working hours

7.1 Suppliers shall set working hours that comply with national laws or benchmark industry standards or relevant international standards, whichever affords greater protection to ensure the health, safety and welfare of workers.

7.2 Suppliers shall respect that the standard allowable working hours in a week are 48, excluding overtime. Workers shall not on a regular basis be required to work in excess of 48 hours per week.

7.3 Overtime shall be voluntary, shall not exceed twelve hours per week and shall not be requested on a regular basis.

7.4 Suppliers shall respect all workers right to at least one free day following six consecutive days worked as well as public and annual holidays.

3.2.5.2. Domestic standards

Working Time Regulations (1998)

Adult workers cannot be forced to work more than 48 hours a week on average - this is normally averaged over 17 weeks. Workers can agree to opt out of this limit, but must do so in writing and not by collective agreement. The worker has the right to terminate their opt-out through notice of seven days or longer (up to three months) if agreed. The Working Time Regulations entitle all workers and employees to:

- A minimum daily rest break of 11 hours between finishing their job and starting the next day. (Workers aged between 15-18 are entitled to a minimum daily rest break of 12 hours).
- A weekly rest day of 24 hours within each seven day period (young workers aged 15-18 are entitled to 48 hours); or a fortnightly rest period of 48 consecutive hours within each 14 day period.
- A break of 20 minutes if their daily working day is more than 6 hours long (or 30 minutes if they are aged 15-18 years and work more than 4.5 hours at a stretch).

The Working Time Regulations also entitle workers and employees to a legal minimum of 28 days paid leave each year.

3.2.5.3. Practical guidance

Businesses should not, on a regular basis, require workers to work in excess of 48 hours per week and should provide workers with at least one day off (24 hours minimum, 48 hours if aged 15-18) for every 7 day period on average.

Overtime should be voluntary, should not exceed 12 hours per week, should not be demanded on a regular basis and should always be compensated at a premium rate.

Businesses should respect all workers' right to public and annual holidays.

Businesses should ensure that all workers have:

- (a) A minimum daily rest break of 11 hours between finishing their job and starting the next day;
- (b) A break of 20 minutes if their daily working day is more than 6 hours long;
- (c) A minimum of 28 days paid leave each year.

Businesses should ensure that all young workers (aged 15-18) have:

- (a) A minimum daily rest break of 12 hours;
- (b) A break of 30 minutes if they work more than 4.5 hours at a stretch.

3.2.6. Decent Wages

Poverty may force people to accept underpaid work and it is therefore the responsibility of the employer to pay adequate wages and not to go under set

minimum wages, which must allow the employees to fulfil their basic needs (housing, food, clothing) and allow for discretionary income.

3.2.6.1. International standards

3.2.6.1.1. International law

Universal Declaration of Human Rights

Article 23: (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Article 25: (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.

International Covenant on Economic, Social and Cultural Rights

Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) requires recognition that remuneration must be enough to provide workers with a decent living for themselves and their families.

ILO Convention No. 131 on Minimum Wage Fixing (1970)

The Convention requires signatory member states to implement minimum wage mechanisms at a national level.

ILO Convention No. 131 on Minimum Wage Fixing (1970)

Article 1: Each Member of the International Labour Organisation which ratifies this Convention undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate.

Article 3: The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include--

(a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;

(b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

3.2.6.1.2. International guidance

International Labour Office: Global Wage Report

The ILO is focusing on the issue of living wages. It has produced several documents on the issue. The Global Wage Report provides an overview of major trends in wages and wage policies. The report and other relevant guidance are available at: http://www.ilo.org/travail/areasofwork/lang--en/WCMS_DOC_TRA_ARE_WAGE_EN/index.htm.

3.2.6.1.3. Voluntary initiatives

Ethical Trading Initiative Base Code

5. Living wages are paid.

5.1 Wages and benefits paid for a standard working week meet, at a minimum, national legal standards or industry benchmark standards, whichever is higher. In any event wages should always be enough to meet basic needs and to provide some discretionary income.

5.2 All workers shall be provided with written and understandable Information about their employment conditions in respect to wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid.

5.3 Deductions from wages as a disciplinary measure shall not be permitted nor shall any deductions from wages not provided for by national law be permitted without the expressed permission of the worker concerned. All disciplinary measures should be recorded.

Global Social Compliance Programme Reference Code

6. Wages, benefits and terms of employment.

6.1 Work performed must be on the basis of a recognised employment relationship established in compliance with national legislation and practice and international labour standards, whichever affords the greater protection.

6.2 Labour-only contracting, sub-contracting or home-working arrangements, apprenticeship schemes where there is no real intent to impart skills or provide regular employment, excessive use of fixed term contracts of employment, or

any comparable arrangements shall not be used to avoid obligations to workers under labour or social security laws and regulations arising from the regular employment relationship

6.3 Suppliers must compensate their workers by providing wages, overtime pay, benefits and paid leave which respectively meet or exceed legal minimum and/or industry benchmark standards and/or collective agreements, whichever is higher. Compensation shall meet basic needs and provide some discretionary income for workers and their families.

6.4 Suppliers shall provide all workers with written and understandable information about their employment conditions, including wages, before they enter into employment; and about details of their wages for the pay period concerned each time that they are paid.

6.5 Suppliers shall not make any deductions from wages which are unauthorised or not provided for by national law. Suppliers shall not make any deduction from wages as a disciplinary measure.

6.6 The supplier shall provide all legally required benefits, including paid leave, to all workers.

6.7 Suppliers shall always compensate all workers for all overtime at a premium rate, as required by law and, where applicable, by contractual agreement.

3.2.6.2. Domestic standards

National Minimum Wage Act 1998

The national minimum wage (NMW) is a legal right which covers almost all workers in the UK.³⁹ It became law on 1 April 1999 to prevent unduly low pay and also to help create a level playing field for employers. The number of hours for which employers have to pay their workers the NMW is calculated differently according to the types of work they do. The types of work for NMW purposes are time work, salaried-hours work, output work and unmeasured work. Employers are legally required to keep sufficient records to show they are paying their workers at least the NMW.

Practical guidelines are available at:

http://www.direct.gov.uk/en/Employment/Employees/TheNationalMinimumWage/DG_10027201

3.2.6.3. Practical guidance

Businesses should respect the right of workers to just and favourable remuneration ensuring for themselves and their families an existence that is worthy of human dignity.

UK businesses should comply with the *National Minimum Wage Act 1998* for their operations in the UK. When operating abroad, businesses should at a minimum ensure that the wages they pay are adequate to meet basic needs and to provide some discretionary income.

Businesses should not carry out deductions from wages as disciplinary measures.

3.3. Privacy

The right to privacy in a business context takes several forms. It covers the protection of personal data of employees and users/customers, as well as the right not to be subjected to harassment at work, which is a particularly severe violation of the right to privacy. Interestingly, international law is underdeveloped on this issue and the international guidance is limited.

3.3.1. International standards

3.3.1.1. International law

EU Charter of Fundamental Rights

While the Charter is not directly binding on UK businesses but only on EU institutions, it was incorporated in the Treaty of Lisbon and is a comprehensive human rights text. It includes an article on the protection of personal data, which sets out basic principles and can be of use for businesses, as a benchmark.

EU Charter of Fundamental Rights

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid

down by law. Everyone has the right of access to data which have been collected concerning him or her, and the right to have it rectified.

3. Compliance with these rules shall be subject to control by an independent authority.

3.3.1.2. International guidance

ILO Code of practice on the protection of workers' personal data 1997

This code, which is not binding, applies to both the public and the private sectors and to the manual and automatic processing of all workers' personal data (Article 4(1)). The code covers the following areas: collection, security, storage, use and communication of personal data by employers.

The following general principles should be applied:

ILO Code of practice on the protection of workers' personal data 1997

5. General principles

5.1. Personal data should be processed lawfully and fairly, and only for reasons directly relevant to the employment of the worker.

5.2. Personal data should, in principle, be used only for the purposes for which they were originally collected.

5.3. If personal data are to be processed for purposes other than those for which they were collected, the employer should ensure that they are not used in a manner incompatible with the original purpose, and should take the necessary measures to avoid any misinterpretations caused by a change of context.

5.4. Personal data collected in connection with technical or organisational measures to ensure the security and proper operation of automated information systems should not be used to control the behaviour of workers.

5.5. Decisions concerning a worker should not be based solely on the automated processing of that worker's personal data.

5.6. Personal data collected by electronic monitoring should not be the only factors in evaluating worker performance.

5.7. Employers should regularly assess their data processing practices:

(a) to reduce as far as possible the kind and amount of personal data collected; and

(b) to improve ways of protecting the privacy of workers.

5.8. Workers and their representatives should be kept informed of any data collection process, the rules that govern that process, and their rights.

5.9. Persons who process personal data should be regularly trained to ensure an understanding of the data collection process and their role in the application of the principles in this code.

5.10. The processing of personal data should not have the effect of unlawfully discriminating in employment or occupation.

5.11. Employers, workers and their representatives should cooperate in protecting personal data and in developing policies on workers' privacy consistent with the principles in this code.

5.12. All persons, including employers, workers' representatives, employment agencies and workers, who have access to personal data, should be bound to a rule of confidentiality consistent with the performance of their duties and the principles in this code.

5.13. Workers may not waive their privacy rights.

Global Network Initiative

The Initiative (please see Annex) aims at encouraging the protection of freedom of expression and privacy in the Information and Communications Technology (ICT) sector.

Global Network Initiative

- Participating companies will employ protections with respect to personal information in all countries where they operate in order to protect the privacy rights of users.
- Participating companies will respect and protect the privacy rights of users when confronted with government demands, laws or regulations that compromise privacy in a manner inconsistent with internationally recognised laws and standards.

3.3.2. Domestic standards

Protection from Harassment Act 1997

The *Protection from Harassment Act 1997* is designed to protect individuals from harassment and similar conduct. It makes it an offence to carry out a course of conduct that causes harassment, including in the workplace. It does not define harassment, although it makes clear that alarming a person or causing a person distress may constitute harassment. It also creates an offence of putting people in fear of violence being used against them. The Act would include situations where one employee, in the scope of his or her employment,

harasses another employee. In such cases the employer will be held vicariously liable for that harassment if a sufficiently clear link can be established between the work and the harassment that allegedly occurred.

Data Protection Act (1998)

The *Data Protection Act* (DPA) governs the use of personal information by businesses and other organisations. The Act defines eight data protection principles and establishes a number of legal obligations to protect information and the right to privacy of the employees. The DPA sets up a regime to regulate the processing of personal data and sensitive personal data. It establishes principles by which lawful data processing should be conducted, including in some cases the prior approval of the data subject. This Act is relevant to businesses since they usually handle personal information about individuals (employees).

Regulation of Investigatory Powers (RIP) Act 2000 & The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000

The RIP Act established a basic principle that communications may not be intercepted without consent. The Regulations make an exception to this rule and allow businesses to intercept communications without consent for certain legitimate purposes such as for quality control and staff training purposes. The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 authorise certain interceptions of telecommunication communications which would otherwise be prohibited by section 1 of the RIP Act 2000. The interception has to be by or with the consent of a person carrying on a business (which includes the activities of government departments, public authorities and others exercising statutory functions) for purposes relevant to that person's business and using that business's own telecommunication system.

3.3.3. Practical guidance

Businesses should respect the privacy of their workers and customers. The right to privacy of workers includes the right to work free from harassment.

Businesses should protect their workers' personal data. Such data should be processed fairly and on the basis of the consent of the person concerned or some other legitimate basis laid down by law.

To ensure the protection of the right to privacy, businesses should have a policy regarding user and staff data protection and should consider updating it regularly.

3.4. Customers and Communities

This area is wide and covers the relationships between businesses and persons other than staff, i.e. customers and the communities who may be affected by the way businesses operate.

Communities can be affected in a variety of ways. For example, they may be deprived of drinking water due to the adverse environmental impact caused by businesses. Also, vulnerable customers may be subjected to severe human rights violations committed by businesses, as exemplified in the Winterbourne View unit scandal unveiled in the BBC Panorama programme in May 2011. In this extreme case, abuses were committed by employees of a private company against the people with learning disabilities they were supposed to care for. This section highlights the fact that doing business entails some responsibilities which go beyond mere business operations.

3.4.1. International standards

3.4.1.1. International law

UN Declaration on the Rights of Indigenous Peoples (2007)

The Declaration is a non binding document adopted in 2007 and is relevant to businesses operating abroad. Arguably, this is of limited relevance to UK SMEs. Several important rights are affirmed in this declaration, notably the right to land and to development. The declaration affirms that indigenous peoples have the right to free, prior and informed consent. In practical terms this means that before operating in indigenous territories, companies have an obligation to seek the approval of indigenous communities to undertake any activities on their lands. Companies also have an obligation to respect indigenous peoples' rights to land which includes control over the natural resources.

Indigenous and Tribal Peoples Convention, 1989 (ILO Convention No 169)

Article 3

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions

of the Convention shall be applied without discrimination to male and female members of these peoples.

2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.

Article 13

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship

Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

Article 16

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3.4.1.2. International guidance

OECD Guidelines for Multinational Enterprises

II. A. 2): Enterprises should respect the internationally recognised human rights of those affected by their activities.

II. A. 5): Enterprises should refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to human rights, *environmental*, health, safety, labour, taxation, financial incentives, or other issues

V. Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

1. Establish and maintain a system of environmental management appropriate to the enterprise, including:

- a) Collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;
- b) Establishment of measurable objectives and, where appropriate, targets for improved environmental performance and resource utilisation, including periodically reviewing the continuing relevance of these objectives; where appropriate, targets should be consistent with relevant national policies and international environmental commitments; and
- c) Regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.

2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:

- a) Provide the public and workers with adequate, measureable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and
- b) Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.

3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.

4. Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account

human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.

5. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.

6. Continually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain, by encouraging such activities as:

a) Adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;

b) Development and provision of products or services that have no undue environmental impacts; are safe in their intended use; reduce greenhouse gas emissions; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;

c) Promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise, including, by providing accurate information on their products (for example, on greenhouse gas emissions, biodiversity, resource efficiency, or other environmental issues); and

d) Exploring and assessing ways of improving the environmental performance of the enterprise over the longer term, for instance by developing strategies for emission reduction, efficient resource utilisation and recycling, substitution or reduction of use of toxic substances, or strategies on biodiversity.

7. Provide adequate education and training to workers in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.

8. Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection

VIII. When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all

reasonable steps to ensure the quality and reliability of the goods and services that they provide. In particular, they should:

1. Ensure that the goods and services they provide meet all agreed or legally required standards for consumer health and safety, including those pertaining to health warnings and safety information.
2. Provide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions, including information on the prices and, where appropriate, content, safe use, environmental attributes, maintenance, storage and disposal of goods and services. Where feasible this information should be provided in a manner that facilitates consumers' ability to compare products.
3. Provide consumers with access to fair, easy to use, timely and effective non-judicial dispute resolution and redress mechanisms, without unnecessary cost or burden.
4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent or unfair.
5. Support efforts to promote consumer education in areas that relate to their business activities, with the aim of, *inter alia*, improving the ability of consumers to: *i*) make informed decisions involving complex goods, services and markets, *ii*) better understand the economic, environmental and social impact of their decisions and *iii*) support sustainable consumption.
6. Respect consumer privacy and take reasonable measures to ensure the security of personal data that they collect, store, process or disseminate.
7. Co-operate fully with public authorities to prevent and combat deceptive marketing practices (including misleading advertising and commercial fraud) and to diminish or prevent serious threats to public health and safety or to the environment deriving from the consumption, use or disposal of their goods and services.
8. Take into consideration, in applying the above principles, *i*) the needs of vulnerable and disadvantaged consumers and *ii*) the specific challenges that e-commerce may pose for consumers.

3.4.1.3. Voluntary initiatives

3.4.1.3.1. General initiatives

International Finance Corporation Policy and Performance Standards on Social & Environmental Sustainability 2006

The International Finance Corporation (IFC) is a member of the World Bank Group. It promotes development through the private sector by providing loans and advisory services.

There are currently eight performance standards that the IFC applies to all investment projects to minimize their impact on the environment and on affected communities. Seven of these standards are directly relevant to human rights and among those, four relate to the impact of businesses on communities: social and environmental assessment of projects; pollution prevention and abatement, community health, safety and security and indigenous peoples.

Performance standard 1 - Social and Environmental Assessment and Management Systems

“Social and environmental performance” should be managed “throughout the life of a project”. Businesses should set up a system which “entails the thorough assessment of potential social and environmental impacts and risks from the early stages of project development, and provides order and consistency for mitigating and managing these on an ongoing basis.”⁴⁰

Performance standard 3 - Pollution Prevention and Abatement.

“Performance Standard 3 recognizes that increased industrial activity and urbanization often generate increased levels of pollution to air, water, and land that may threaten people and the environment at the local, regional, and global level. However, along with international trade, pollution prevention and control technologies and practices have become more accessible and achievable in virtually all parts of the world. This Performance Standard outlines a project approach to pollution prevention and abatement in line with these internationally disseminated technologies and practices.”⁴¹

Performance standard 4 - Community health, safety and security.

“While acknowledging the public authorities’ role in promoting the health, safety and security of the public, this Performance Standard addresses the client’s responsibility to avoid or minimize the risks and impacts to community health, safety and security that may arise from project activities. The level of risks and impacts described in this Performance Standard may be greater in projects located in conflict and post-conflict areas.”⁴² In order to comply with this standard, businesses must follow community health and safety requirements as well as security personnel requirements.

Performance standard 7 – Indigenous Peoples.

Performance Standard 7 recognizes that Indigenous Peoples, as social groups with identities that are distinct from dominant groups in national societies, are

often among the most marginalized and vulnerable segments of the population. This Performance Standard recognizes that Indigenous Peoples may play a role in sustainable development by promoting and managing activities and enterprises as partners in development.

Red Flags: Liability Risks for Companies Operating in High-Risk Zones

The website lists a number of activities which can potentially incur human rights violations and which are therefore “red-flagged”. The activities listed include (below are extracts from the website):

- Expelling people from their communities. A company may be liable if it has gained access to the site on which it operates, where it builds infrastructure, or where it explores for natural resources, through forced displacement.
- Engaging abusive security forces. The use of disproportionate force by government or private security forces acting on behalf of a company can create liabilities for the company itself. These liabilities may rise even where the actions of the security forces (e.g. killing, beating, abduction, rape) were neither ordered nor intended by the company. Legal risks may be greater where security forces have a history of abusive conduct.
- Providing the means to kill. Businesses may face liabilities if they provide weapons or dual-use equipment to governments or armed groups who use those products to commit atrocities. This may be the case even where import and export regulations are fully respected.
- Allowing use of company assets for abuses. Company facilities and equipment used in the commission of international crimes can create liability for the company, even if it did not authorize or intend such use of those assets.

3.4.1.3.2. Sector initiatives

Voluntary Principles on Security and Human Rights for the Extractive Sector

The Principles recommend that extractive companies undertake risk assessments prior to development of operations in certain areas. Effective risk assessments must include the “identification” and “understanding” of “the root causes and nature of local conflicts, as well as the level of adherence to human rights and international humanitarian law standards by key actors”. Careful consideration of human rights records of the local authorities and private security companies is also key. The Principles include guidance for companies on how to interact with public and private security. They recommend, for example, that companies put human rights at the heart of their discussions with

the stakeholders when setting up security arrangements, and communicate their human rights and ethical expectations when hiring security providers.

International Alert Conflict-sensitive business practice: Guidance for extractive industries

The Guidance includes three practical tools (below are extracts from the Guidance document⁴³):

- Screening tool: the screening consists of desk-based research by staff responsible for country risk at headquarters level and involves consultation of a variety of online sources to answer a list of questions.

- Macro-level Conflict Risk and Impact Assessment tool (M-CRIA): M-CRIA builds on the preliminary findings of the Screening Tool and uses a combination of desk research, targeted consultations and internal company brainstorming. It develops a thorough context analysis focusing at macro level. The information gathered during the process is discussed inter-departmentally to identify company/conflict impacts and begin the design of mitigating actions. The material should be regularly updated.

- Project-level Conflict Risk and Impact Assessment tool (P-CRIA): M-CRIA notes that traditional political and financial risk assessment and management processes are inadequate in analyzing and assessing the full range of issues that might cause, trigger or exacerbate violent conflict. A similar critique can be made of environmental and social impact assessments (ESIAs). These limitations are particularly problematic at the project level where a restricted understanding of the context - and the full range of the company's impacts on the context - could lead to difficult relationships, and even conflict.

P-CRIA is designed to address these gaps. It fulfils the same function at a local level that M-CRIA does at a national level, though its specificity adds new dimensions and emphases to its method. Inasmuch as it provides a way of understanding and managing company/context interactions at the local level, it can be seen as a mechanism for generating a 'social license to operate'. P-CRIA helps a company promote transparent and trusting relationships with relevant communities and stakeholders as a means of minimizing tensions, avoiding conflict and encouraging (within the limits of a company's capacity and legitimate competence) peace through equitable social, economic and political development.

P-CRIA uses a combination of desk research, targeted individual consultations, community-wide and group-specific consultations, problem-solving workshops, collaborative activities and internal company brainstorming. Although it generates a lot of information, P-CRIA is not a prolonged data-gathering exercise, but a mechanism for ensuring the company and communities work together towards understanding company/context interaction, and the development and realization of mutual objectives in terms of project design, operation and closure. As such, the process used for implementation is as significant as its outputs.

Kimberley Process Certification Scheme

This is an initiative by governments, the diamond industry and civil society to stem the flow of conflict diamonds. The Kimberley Process Certification Scheme imposes extensive requirements on its members to enable them to certify shipments of rough diamonds as “conflict-free”.

Global Network Initiative

The initiative aims to advance freedom of expression and privacy and is limited to the Information and Communications Technology (ICT) sector. Please see Annex for more information.

Global Network Initiative

- Participating companies will respect and protect the freedom of expression of their users by seeking to avoid or minimize the impact of government restrictions on freedom of expression, including restrictions on the information available to users and the opportunities for users to create and communicate ideas and information, regardless of frontiers or media of communication.
- Participating companies will respect and protect the freedom of expression rights of their users when confronted with government⁸ demands, laws and regulations to suppress freedom of expression, remove content or otherwise limit access to information and ideas in a manner inconsistent with internationally recognized laws and standards.

3.4.2. Domestic standards

Corporate Manslaughter and Corporate Homicide Act 2007

The *Corporate Manslaughter and Corporate Homicide Act* introduces a new offence, across the UK, to allow the prosecution of companies and other organisations where there has been a gross failing, throughout the organisation, in the management of health and safety with fatal consequences. As such it creates an offence of gross negligence corporate manslaughter (as enhancing the ability of the UK to meet its obligation to protect the right to life, as guaranteed by Article 2 ECHR).

An organisation will be guilty of the new offence if the way in which its activities are managed or organised causes a death and amounts to a gross breach of a duty of care to the deceased. The offence applies to all companies and other corporate bodies, operating in the UK, in the private, public and third sectors. It also applies to partnerships (and to trade unions and employers' associations) if they are an employer, as well as to government departments and police forces.

Racial and Religious Hatred Act 2006

The Act establishes the criminal offence of stirring up racial hatred against a person on racial or religious grounds. This Act is relevant to businesses as it extends the offence from individuals to businesses if it can be shown that the hatred has been stirred up with the consent or connivance of the director, manager, company secretary or any person purporting to act in any such capacity.

3.4.3. Practical guidance

Businesses should respect the human rights of those affected by their activities by taking due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development.

To ensure that they do not violate the rights of those affected by their activities, businesses should systematically conduct human rights and environmental risk assessment of projects. They should pay particular attention to the practices of the private security companies they hire and public law enforcement agencies they collaborate with as they may act in ways that are inconsistent with the respect of the human rights in local communities.

Businesses should strive to respect their customers' human rights, for example their right not to be discriminated against or their freedom of expression.

Businesses operating abroad should pay specific attention to the rights of indigenous peoples over their lands and natural resources. They have to engage in a process of ensuring free, prior and informed consent before undertaking any activities on their lands.

3.5. Transparency

This area relates to ethical and transparent corporate governance. In certain circumstances, it includes the obligation for businesses to provide information in good faith. While the link between bribery and human rights may not be immediately relevant, corruption practices have devastating effects in certain countries and it is now recognised that corruption practices and human rights violations often go hand in hand. As explained by leading organisations in his area,

“Bribery is not a victimless crime. It disproportionately affects the poor and is a persistent threat to development and democracy, undermining the achievement of the Millennium Development Goals. When multinational companies bribe foreign public officials, it undermines the rule of law and the principle of fair competition and entrenches bad governance in developing countries, hindering their efforts to alleviate poverty and often contributing to instability and human rights abuses. Corruption, including bribery, impedes the delivery of vital public services, denying millions of people access to water, health and education across the developing world”⁴⁴.

3.5.1. International standards

3.5.1.1. International law

OECD Convention on Combating Bribery of Foreign Public Officials 1997

Article 1. (1) Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the

performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.

Article 2: Responsibility of Legal Persons. Each Party shall take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official.

As explained in the commentaries on the OECD Convention on Combating Bribery of Foreign Public Officials, such a Convention:

deals with what, in the law of some countries, is called “active corruption” or “active bribery”, meaning the offence committed by the person who promises or gives the bribe, as contrasted with “passive bribery”, the offence committed by the official who receives the bribe. The Convention does not utilise the term “active bribery” simply to avoid it being misread by the non-technical reader as implying that the briber has taken the initiative and the recipient is a passive victim. In fact, in a number of situations, the recipient will have induced or pressured the briber and will have been, in that sense, the more active.⁴⁵

UN Convention against Corruption 2003

Article 5. (1) Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

Article 12. (1) Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

Article 15. Bribery of national public officials. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Article 16. Bribery of foreign public officials and officials of public international organizations

Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

3.5.1.2. International guidance

OECD Guidelines for Multinational Enterprises

V 2. c). Enterprises should Provide information to workers and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.

VII. Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Enterprises should also resist the solicitation of bribes and extortion. In particular, enterprises should:

1. Not offer, promise or give undue pecuniary or other advantage to public officials or the employees of business partners. Likewise, enterprises should not request, agree to or accept undue pecuniary or other advantage from public officials or the employees of business partners. Enterprises should not use third parties such as agents and other intermediaries, consultants, representatives, distributors, consortia, contractors and suppliers and joint venture partners for channelling undue pecuniary or other advantages to public officials, or to employees of their business partners or to their relatives or business associates.

2. Develop and adopt adequate internal controls, ethics and compliance programmes or measures for preventing and detecting bribery, developed on the basis of a risk assessment addressing the individual circumstances of an enterprise, in particular the bribery risks facing the enterprise (such as its

geographical and industrial sector of operation). These internal controls, ethics and compliance programmes or measures should include a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts, to ensure that they cannot be used for the purpose of bribing or hiding bribery. Such individual circumstances and bribery risks should be regularly monitored and re-assessed as necessary to ensure the enterprise's internal controls, ethics and compliance programme or measures are adapted and continue to be effective, and to mitigate the risk of enterprises becoming complicit in bribery, bribe solicitation and extortion.

3. Prohibit or discourage, in internal company controls, ethics and compliance programmes or measures, the use of small facilitation payments, which are generally illegal in the countries where they are made, and, when such payments are made, accurately record these in books and financial records.

4. Ensure, taking into account the particular bribery risks facing the enterprise, properly documented due diligence pertaining to the hiring, as well as the appropriate and regular oversight of agents, and that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents engaged in connection with transactions with public bodies and State-owned enterprises should be kept and made available to competent authorities, in accordance with applicable public disclosure requirements.

5. Enhance the transparency of their activities in the fight against bribery, bribe solicitation and extortion. Measures could include making public commitments against bribery, bribe solicitation and extortion, and disclosing the management systems and the internal controls, ethics and compliance programmes or measures adopted by enterprises in order to honour these commitments. Enterprises should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery, bribe solicitation and extortion.

6. Promote employee awareness of and compliance with company policies and internal controls, ethics and compliance programmes or measures against bribery, bribe solicitation and extortion through appropriate dissemination of such policies, programmes or measures and through training programmes and disciplinary procedures.

7. Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Political contributions should fully

comply with public disclosure requirements and should be reported to senior management.

OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, 2009

The Recommendation was adopted “to enhance the ability of the 38 states Parties to the Anti-Bribery Convention to prevent, detect and investigate allegations of foreign bribery”. Interestingly, it includes a Good Practice Guidance on internal Controls, Ethics and Compliance, which is directly addressed to companies and contains detailed guidelines for companies to follow.

3.5.1.3. Voluntary initiatives

UN Global Compact

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

Extractive Industries Transparency Initiative (EITI) Principles and Criteria

This initiative aims to strengthen governance by improving transparency and accountability in the extractive sector. The EITI sets a global standard for businesses to publish what they pay and for governments to disclose what they receive.

Extractive Industries Transparency Initiative Principles and Criteria

Principle 9: We are committed to encouraging high standards of transparency and accountability in public life, government operations and in business.

Criteria

1. Regular publication of all material oil, gas and mining payments by companies to governments (“payments”) and all material revenues received by governments from oil, gas and mining companies (“revenues”) to a wide audience in a publicly accessible, comprehensive and comprehensible manner.
2. Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards.

3. Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with the publication of the administrator's opinion regarding that reconciliation including discrepancies, should any be identified.
4. This approach is extended to all companies including state-owned enterprises.
5. Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.
6. A public, financially sustainable work plan for all the above is developed by the host government, with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.

Red Flags: Liability Risks for Companies Operating in High-Risk Zones

The website lists a number of activities which can potentially incur human rights violations and which are therefore "red-flagged". The activities listed include "making illicit payments". As indicated on the website:

"Any significant off-the-book financial transactions may create legal liabilities under laws against corruption or bribery. Charges may be brought outside the country where the transaction takes place. Even where corruption is a common occurrence, a liability risk remains".

3.5.2. Domestic standards

Anti-terrorism, Crime and Security (ATCS) Act 2001

Part 12 of this Act includes legislation on bribery and corruption. This came into force on 14 February 2002 to deter UK businesses and nationals from committing acts of bribery overseas (including facilitation payments).

Bribery Act 2010

The new legislation was adopted to reform the criminal law of bribery. It received Royal Assent on 8 April 2010. The *Bribery Act* 2010 will come into force on 1 July 2011. The *Bribery Act* will:

- replace the fragmented and complex offences at common law and in the Prevention of Corruption Acts 1889-1916;

- create two general offences covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage;
- create a discrete offence of bribery of a foreign public official;
- create a new offence of failure by a commercial organisation to prevent a bribe being paid for or on its behalf (it will be a defence if the organisation has adequate procedures in place to prevent bribery).

Companies Act 2006

The revised *Companies Act* includes reporting requirements, notably of the directors. The Board must provide a regular account of how it complies with its duties through an operating and financial review, a narrative on how the following affect future development: environmental matters, employees, social and community issues.

Sections 171 to 177 are dedicated to the directors' general duties, such as: to act within the company's constitution; to promote the success of the company; to exercise independent judgement, reasonable care, skill and diligence, and to avoid conflicts of interest.

Section 172 of the Act codifies the fiduciary duty to act in good faith in the company's best interest in order to promote the success of the company. This can be widely interpreted - in exercising the duty a director must be aware of the non-exhaustive list of factors listed in s.172 (1). This includes the long term consequence of decisions and the interests of the employees; the relationships with suppliers, customers; the impact of the decision on the community and environment; the desirability of maintaining a reputation for high standards of business conduct; and the need to act fairly as between members of the company. However, the direct human rights obligations of the directors are not clearly stipulated in the Act and the jurisprudence has been inconsistent.⁴⁶

An updated version of the Act is currently being examined by the government.

3.5.3. Practical guidance

Businesses should not engage in bribery in order to obtain or retain business or other improper advantage in the conduct of their business.

Businesses should not offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties.

Businesses should act in a transparent way for example by allowing employees and/or trade unions or workers' associations to obtain a true and fair view of the performance of the company.

3.6. Human Trafficking

Human trafficking is one of the worst forms of human rights violations and constitutes a modern form of slavery. Typically, the victims are rendered vulnerable by poverty, sex or age, are targeted by traffickers for this very reason and end up working in inadequate conditions, usually as prostitutes or domestic workers but also, in certain cases, in otherwise legitimate UK businesses (see section 3.2.2 on forced labour).

Businesses may be directly involved in human trafficking and the human rights violations it entails, but they can also be indirectly linked to trafficking "through the actions of their suppliers or business partners, including sub-contractors, labour brokers or private employment agencies. In this way, businesses can be implicated if they source goods or use services that are produced or provided by trafficking victims. In both cases, although the link may not be intended or even known, a clear violation of human rights has occurred."⁴⁷ In that sense, the international legal standards on human trafficking are directly relevant to the UK private sector, including SMEs.

3.6.1. International standards

There are three main international treaties on human trafficking but no international guidance.

UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, 2003 (the 'Palermo Protocol')

Article 3. Use of terms. For the purposes of this Protocol:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age.

Protocol against the Smuggling of Migrants by Land, Sea and Air, 2004

Article 3. Use of terms. For the purposes of this Protocol:

(a) "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;

Council of Europe Convention against Trafficking in Human Beings, 2005

Article 4 – Definitions. For the purposes of this Convention :

(a) "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age;

(e) "Victim" shall mean any natural person who is subject to trafficking in human beings as defined in this article.

3.6.2. Domestic standards

Sexual Offences Act 2003

The Act introduces the offences of trafficking of peoples into, within and out of the UK for sexual exploitation (sections 57-59). These trafficking offences came into force in 2004 and carry a maximum penalty of 14 years in prison.

Asylum and Immigration (Treatment of Claimants) Act 2004

The Act establishes the specific offences of trafficking people for labour exploitation. Under section 4(1) a person commits an offence if he arranges or facilitates the arrival in or the entry into the UK of an individual, and a) intends to exploit the person in the UK or elsewhere, or b) believes another person is likely to. Under section 4(2) a person commits an offence if he arranges or facilitates travel within the UK of an individual in respect of whom he believes has been trafficked into the UK and he intends to exploit the person, or believes another person is likely to, whether in the UK or elsewhere.

3.6.3. Practical guidance

Businesses should not get directly involved in human trafficking and should also make sure that their staff have not been trafficked and work voluntarily.

Businesses should make sure that traffickers are not using their company's products, premises and/or services in connection with their trafficking activities.

Businesses should make sure that none of their suppliers are involved in trafficking. This implies an obligation on businesses to ensure that subcontractors, recruitment agencies and labour brokers are not engaging in human trafficking.

Chapter 4: Public Services and Procurement

The delivery of public services often involves private enterprises that are in charge of supplying essential commodities, such as water or electricity, or a service, such as communications or transportation, to the public. The delivery of public services constitutes a specific legal area as it concerns the process of providing essential commodities to the public. As such, businesses engaged in this sector have to be aware of the human rights obligations of the government, since they may be asked to follow the same standards. With an increasing number of private enterprises directly charged with delivering public services, the specific human rights obligations have been transferred to the sector when operating in this “public function”. Thus any business involved in the delivery of public services should be aware of the specific human rights framework surrounding the public services and procurement.

Three main areas are of relevance in this context: (1) the delivery of public services by the private sector under the Human Rights Act (HRA); (2) access and freedom of information; (3) public procurement rules.

4.1. Public Service Delivery

4.1.1. The definition of public function

The HRA does not define the notion of “public authority” in detail but states that the Act applies to “any person certain of whose functions are functions of a public nature”. Hence, the HRA is directly relevant to businesses (independent of size) which are conducting business of a “public nature”, such as running a care home or a prison. A private company will not be directly liable under the Act for its purely private functions, but could be liable for its “public functions” activities.

It is left to the courts to interpret the Act and decide what “public authorities” and “public functions” are. It is therefore crucial to determine if the private company is acting within the remit of a “public function”. Courts have established a test to decide when private entities are acting in a “public function” capacity, but a clearer definition of the notion would be welcomed.⁴⁸

The existing case law tends to indicate that unless the public body exerts a significant degree of operational control over the private service provider, it is likely that the courts will consider the service provider to be within the scope of the HRA.⁴⁹ Courts’ decisions also suggest that in the future, public authorities

that contract out services should require an undertaking from private service providers that they will recognise the rights guaranteed by the HRA.⁵⁰

Businesses should also note that when industries are directly regulated by a public authority, it is likely that any activity undertaken in this area falls under the scrutiny of the HRA, independent of the “public function test”. This includes, for example, the financial industry which is controlled by the Financial Services Authority or the security industry regulated by the Security Industry Authority.

Likewise, businesses that are carrying out regulatory functions will usually fall under the reach of the HRA if these involve a public function. For example, a company with the power to control the holding of a stall at a local market was found to be a public authority.⁵¹

4.1.2. Consequences and guidance

In the instance of a violation of the HRA by a private entity acting in a public function, case law to date has established a trend by which members of the public usually seek remedies against the public body that engaged the contract rather than the supplier private entity.⁵² However, businesses should be aware that more and more public bodies require that the service provider should undertake to protect the human rights of service users when signing a contract for delivery of public services.⁵³ In general, private enterprises involved in the delivery of public services should be aware that more and more public authorities have started to adopt contract clauses with termination notices if a contractor defaults on its human rights responsibilities.

Such contracts legally bind service providers to the human rights obligations contained in the HRA. If an individual’s human rights are breached by a service provider which has entered into a contract that guarantees service users’ human rights, an individual may bring a claim directly against the provider using the HRA. If the service provider fails to meet its responsibilities under the contract, it is open to challenges from both the public authority with whom it contracted and the individuals who were adversely affected by its failings.⁵⁴

Before signing a contract, businesses should verify whether the contracting arrangements have identified the risks associated with the delivery of services and whether they are in compliance with the HRA.

More guidance on contracting for public services in light of the Human Rights Act is available from the Office of the Deputy Prime Minister and is articulated in

a document entitled 'Guidance on contracting for services in the light of the Human Rights Act 1998'. This document is available electronically at: <http://www.communities.gov.uk/documents/localgovernment/pdf/142577.pdf>.

4.2. Freedom of Information

Access to information constitutes another special feature of public work and public services and is covered by a specific legal regime that rests on two legislative pillars, namely the *Freedom of Information Act 2000* and the *Health and Social Care Act 2008*.

Freedom of Information Act (2000)

Under the *Freedom of Information Act (2000)*, everyone has the right to request information held by public sector organisations. While mainly relevant to public authorities, it also provides for the disclosure of information held by persons (including businesses) providing services for public authorities. The Act will also be applicable to contracts signed between public authorities and businesses providing goods and services to public authorities.

The Act could also be used as a tool for businesses to get access to information regarding contracts, bids, compliance and performance data and even information that shapes procurement from public authorities.

Not all commercial information has to be disclosed. The Act contains a number of exemptions for confidential data, trade secrets and any other information that could prejudice commercial interests (prejudice to business interests will have to be weighed against the public interest in disclosing information).

More guidance and information is available at:

<http://www.freedomofinformation.co.uk/content/view/38/45/>

Health and Social Care Act 2008

The *Health and Social Care Act 2008* establishes the Care Quality Commission. The Act give the Commission the function of setting up and maintaining a new registration system for providers of health and adult social care who carry out regulated activities. This registration system covers private and voluntary health care providers and adult social care providers.

The most relevant part of the Act is Section 145 which provides that a service user who is placed in an independent care home by a local authority has to comply with the Human Rights Act.⁵⁵

4.3. Public procurement

Public procurement law regulates contracts for goods, works or services entered into by public sector bodies and certain utility sector bodies.

The main regulatory framework for public procurement comes from the EU directives on public procurement.⁵⁶ The EU directives contain several rules regarding the selection of procurers, notably a mandatory exclusion of suppliers convicted of specific offences, including participation in a criminal organisation, money laundering, fraud and corruption, which applies to public procurement contracts for services, supplies, and works. The European Commission has also produced several sets of guidance on the European regulations regarding public procurement notably focusing on social issues.⁵⁷ These directives have been implemented in the UK under several specific regulations.⁵⁸

Public Procurement Regulations 2006

The *Public Contracts Regulations 2006*⁵⁹ implement *Directive 2004/18/EC* on the co-ordination of procedures for the award of public works contracts, public supply contracts and public service contracts. The *Public Procurement Regulations* are designed to ensure free and fair access to, and competition for, public sector contracts. The regulations apply to all public sector contracts.

The Regulations generally apply when (a) the procuring body is a "contracting authority" (which includes central government, local authorities, and other bodies governed by public law); b) and the contract is a public works, services or supplies contract.⁶⁰

Regarding human rights, the most relevant section of the act is Article 45(2)(D) which allows contracting authorities to exclude a supplier from the procurement process if he/she is guilty of grave professional misconduct. This could include breaching human rights legislation where the breach is serious enough to constitute grave misconduct. The Regulations also list specific offences, where convictions must result in the mandatory exclusion of contractors from tendering. These cover matters such as fraud, bribery and corruption, which can be linked to abuses of human rights and are an important consideration in helping to protect vulnerable groups of people.

It is worth noting that more and more public authorities are adopting guidelines on the public procurement rules that include references to human rights.

Guidance on the Procurement of Care and Support Services by public bodies in Scotland.

The Scottish government has produced some specific guidance on the procurement of care and support services in Scotland from external service providers. It applies to the procurement of social care and support services for children and families, younger people and adults, including older people; housing support services; and social care and support services commissioned by criminal justice organisations.

See: <http://www.scotland.gov.uk/Publications/2010/09/21100130/0>

Greater London Authority (GLA) Group Responsible Procurement Policy

The GLA Group Responsible Procurement Policy addresses ethical issues. The key focus is to uphold fundamental human rights, to protect workers and to act within the law. For example, the policy states that the GLA Group of organisations will seek to work with suppliers who afford their employees the freedom to choose to work for them. Suppliers should not use forced, bonded or non-voluntary prison labour. They should demonstrate a commitment to equality of opportunity for individuals and groups enabling them to live their lives free from discrimination and oppression. Also, they must support the GLA Group's view that the long-term elimination of child labour is ultimately in the best interests of children, and have taken measures to ensure that child labour is not utilised in their operations.

More information is available at: <http://www.london.gov.uk/rp/>

4.4. Guidance

As a guide, some of the key questions that any company engaging in the delivery of public services should ask themselves are:

- Could the work (or any segment thereof) being undertaken be considered a “public function”?
- Is the work (or any segment thereof) being undertaken akin to that which would otherwise be done by central or local government?
- Does the work involve regulating the activities of the public or sections of the public?

- Does any of the work depend on powers from governmental rules and regulations?

If the answer to any of these questions is positive, businesses should be aware that there is a likelihood that the HRA framework will apply to their work.

Chapter 5 - Conclusion

The research has shown a significant overlap between the different standards in the area of business and human rights (international and domestic, obligatory or voluntary). It has also shown that guidance produced specifically for multinational corporations, such as the *OECD Guidelines for Multinational Enterprises*, or for businesses of a certain size, such as the *UN Global Compact*, may also be of relevance for purely domestic UK businesses in the sense that they set useful standards.

However, the review has also shown a clear lack of guidance for UK based businesses and especially SMEs, both at international and domestic law. While the UK has adopted several statutes that are directly relevant to the enforcement of human rights by the private sector, there is a lack of guidance on this legal framework. (For more details see Annex)

UK businesses, including SMEs, are increasingly expected to engage with human rights issues, and are demanding straightforward guidance on what to do. To address their demands, the guidance below is drafted on six key areas (discrimination; labour rights; privacy; customers and communities; transparency/bribery and human trafficking) in a single condensed list. It is derived from the law, standards and voluntary initiatives set out in Chapter 3. Where appropriate, the original language was kept.

Note

To avoid over-legalistic language, the proposed guidance combines elements from a variety of business and human rights standards in a single document, irrespective of whether the standards are binding or not. Clear information about UK domestic law on each of the six areas, which creates legally enforceable human rights obligations for UK businesses, is available in Chapter 3 under the sub-sections “domestic standards”.

It has proved difficult to produce a similar list for businesses engaged in the delivery of public services or for those who have entered procurement contracts because the law is still unsettled. Chapter 4 attempts to present the current situation, but it is clear from the research undertaken for this review that there is a need for the government and the courts to clarify the extent to which the HRA applies to businesses.

As a final word, it is worth mentioning that the guidance set out below represents the minimal floor standards in the field of human rights and business. In order to fulfil the aspirations of human rights, businesses need to engage not just with the law or with the bare minimum, but with the spirit of human rights protection, which is aimed at the upholding of the inherent dignity and worth of every individual that comes across their path. With this in mind, the guidance is meant to apply throughout the supply chain.

5.1. Discrimination

Business should not discriminate against their employees and customers, directly or indirectly, on the basis of: gender, age, religion, marital status, race, caste, social background, disability, pregnancy, ethnic and national origin, nationality, membership in worker organisations including trade unions, political affiliation, sexual orientation, or any other personal characteristics.

To ensure that employees and customers are not discriminated against, businesses need to adopt specific policies aimed at fostering a culture of respect for diversity, endorsed and followed up by management. A range of specific policies could be designed including training, a complaints procedure to report problems, or, the design of a system to deal with discriminatory treatment through sanctions.

5.2. Labour Rights

5.2.1. Freedom of association and the right to collective bargaining

Businesses should not hinder the right of all workers to collective bargaining and the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing.

Businesses should not discriminate against workers on the basis of their membership of a trade union or an association. In particular, they should not:

- (a) make the employment of a worker subject to the condition that he/she shall not join a union or an association or shall relinquish trade union or association membership;
- (b) cause the dismissal of, or otherwise prejudice a worker by reason of union or association membership or because of participation in union or association activities outside working hours or, with the consent of the employer, within working hours;

(c) threaten to transfer the whole or part of an operating unit from the country concerned nor transfer employees from the enterprises' component entities in other countries in order to influence unfairly employers/workers negotiations or to hinder the exercise of a right to organise;

(d) compile lists of workers who are/have been members of trade unions or associations with a view to use them for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers.

Businesses should promote friendly relationships with their employees and engage in open and constructive negotiations with representatives of employees, trade unions or associations with a view to reaching agreements on employment conditions.

Businesses should facilitate such negotiations, for example by providing facilities to employee representatives as may be necessary to assist in the development of effective collective agreements and by providing information to employee representatives which is needed for meaningful negotiations on conditions of employment.

Businesses should not use agency labour or contractual work as a way to hinder the right to freedom of association and collective bargaining and should be aware of the difficulties these workers may face.

When businesses operate in countries where the right to freedom of association and collective bargaining is restricted under law, they should facilitate, and not hinder, the development of parallel means for independent and free association and bargaining.

5.2.2. Forced Labour

Businesses should not use forced or compulsory labour. Forced or compulsory labour includes all work or service which is exacted from any person under the threat of any penalty or sanction and for which the said person has not offered himself or herself voluntarily.

Forms of forced labour include:

(a) Bonded labour (where labour is demanded as a means of repayment for a loan);

(b) Labour undertaken when violence or threat of violence against the worker or the worker's family is used by the employer or the employer's representative;

- (c) Labour undertaken because of threats used by the employer to report the worker to the authorities, for example because of the worker's immigration status or offences they may have committed in the past;
- (d) Labour undertaken while the employer is retaining the worker's identity papers;
- (e) Labour paid less than the agreed wage.

Businesses should ensure that workers are free to leave their positions after reasonable notice and respect the right of workers to leave the workplace after their shift. Workers should not be forced to live or remain in a particular area, e.g. in poor accommodation.

Businesses should not require workers to make "deposits" or lodge financial guarantees.

5.2.3. Child Labour

Businesses should not employ children under 15 years of age and should not employ children under 18 years of age to carry out night work or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons.

If a child under 15 (or under 18 for the special types of work referred to above) is found to be performing child labour, businesses should develop or participate in and contribute to policies and programmes which provide for the transition of that child to enable her or him to attend and remain in quality education until no longer a child.

Business should make sure that none of their suppliers, subcontractors, recruitment agencies and labour brokers use child labour.

5.2.4. Working Conditions/Health and Safety

Businesses must provide workers with safe working conditions. To achieve this standard, they should:

- (a) ensure that the workplaces, machinery, equipment and processes under their control are safe and without risk to health;
- (b) ensure that the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken;

- (c) provide, where necessary, adequate protective clothing and protective equipment to prevent risk of accidents or of adverse effects on health.
- (d) provide, where necessary, for measures to deal with emergencies and accidents, including adequate first-aid arrangements.
- (e) ensure that workers receive regular and recorded health and safety training;
- (f) ensure access to clean toilet facilities and to potable water;
- (g) ensure that accommodation, where provided, is clean, safe, and meets the basic needs of the workers.

To ensure that these guidelines are followed, businesses should assign responsibility for health and safety to a senior management representative.

5.2.5. Working Hours

Businesses should not, on a regular basis, require workers to work in excess of 48 hours per week and should provide workers with at least one day off (24 hours minimum, 48 hours if aged 15-18) for every 7 day period on average.

Overtime should be voluntary, should not exceed 12 hours per week, should not be demanded on a regular basis and should always be compensated at a premium rate.

Businesses should respect all workers' right to public and annual holidays.

Businesses should ensure that all workers have:

- (a) A minimum daily rest break of 11 hours between finishing their job and starting the next day;
- (b) A break of 20 minutes if their daily working day is more than 6 hours long;
- (c) A minimum of 28 days paid leave each year.

Businesses should ensure that all young workers (aged 15-18) have:

- (a) A minimum daily rest break of 12 hours;
- (b) a break of 30 minutes if they work more than 4.5 hours at a stretch.

5.2.6. Decent Wages

Businesses should respect the right of workers to just and favourable remuneration ensuring for themselves and their families an existence worthy of human dignity.

UK businesses should comply with the National Minimum Wage Act 1998 for their operations in the UK. When operating abroad, businesses should at a minimum ensure that the wages they pay are enough to meet basic needs and to provide some discretionary income.

Businesses should not carry out deductions from wages as disciplinary measures.

5.3. Privacy

Businesses should respect the privacy of their workers and customers. The right to privacy of workers includes the right to work free from harassment.

Businesses should protect their workers' personal data. Such data should be processed fairly and on the basis of the consent of the person concerned or some other legitimate basis laid down by law.

To ensure the protection of this right, businesses should have a policy regarding user and staff data protection.

5.4. Customers and Communities

Businesses should respect the human rights of those affected by their activities by taking due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development.

To ensure that they do not violate the rights of those affected by their activities, businesses should systematically conduct human rights and environmental risk assessment of projects. They should pay particular attention to the practices of the private security companies they hire and public law enforcement agencies they collaborate with as they may act in ways that are inconsistent with the respect of the human rights in local communities.

Businesses should strive to respect their customers' human rights, for example their right not to be discriminated against or their freedom of expression.

Businesses operating abroad should pay specific attention to the rights of indigenous peoples over their lands and natural resources. They have to engage in a process of ensuring free, prior and informed consent before undertaking any activities on their lands.

5.5. Transparency

Businesses should not engage in bribery in order to obtain or retain business or other improper advantage in the conduct of their business.

Businesses should not offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties.

Businesses should act in a transparent way for example by allowing employees and/or trade unions or workers' associations to obtain a true and fair view of the performance of the company.

5.6. Human Trafficking

Businesses should not get directly involved in human trafficking and should also make sure that their staff have not been trafficked and work voluntarily.

Businesses should make sure that traffickers are not using their company's products, premises and/or services in connection with their trafficking activities.

Businesses should make sure that none of their suppliers are involved in trafficking. This implies an obligation on businesses to ensure that subcontractors, recruitment agencies and labour brokers are not engaging in human trafficking.

Annex

Business and Human Rights: a Review of Standards and Guidance

1. International standards

1.1. International law

1.1.1. International labour law

International Labour Organisation Fundamental Conventions (No. 29, 87, 98, 100, 105, 111, 138 and 182)⁶¹

These eight conventions guarantee “core labour rights standards”, which are a set of four internationally recognised basic rights and principles at work: freedom of association and the right to collective bargaining; the elimination of forced labour; the elimination of child labour; and the elimination of discrimination in employment.

Freedom of Association

ILO Convention No. 87: Freedom of Association and Protection of the Right to Organise Convention, 1948 (ratified 1949): The key right protected by the Convention is the right of both workers and employers to “join organisations of their own choosing without previous authorisation.”

ILO Convention No. 98: Right to Organise and Collective Bargaining Convention, 1949 (Ratified 1950): Under Article 1(1), “workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. (2) Such protection shall apply more particularly in respect of acts calculated to (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.”⁶²

Elimination of forced labour

ILO Convention on Forced Labour, 1930 (No. 29): It is the core international standard on the prohibition of forced labour and was ratified by the UK in 1930. The articles most relevant to businesses are:

- Article 2: Defines forced labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. It also lists exceptions to this definition.
- Article 25: Notes that the use of forced labour must be punishable as a penal offence and governments are obliged to “ensure that the penalties imposed by law are really adequate and are strictly enforced”.

Abolition of Forced Labour Convention, 1957 (No. 105): Article 1 states: “Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour (a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) as a method of mobilising and using labour for purposes of economic development; (c) as a means of labour discipline; (d) as a punishment for having participated in strikes; (e) as a means of racial, social, national or religious discrimination.

Elimination of Child Labour

Minimum Age Convention, 1973 (No. 138): The Convention is supplemented by Recommendation No.146 and requires ratifying states to pursue a national policy to ensure the effective abolition of child labour and progressively to increase the minimum age for employment or work.⁶³

Worst Forms of Child Labour Convention, 1999 (No. 182): the Convention covers several of the worst forms of child labour such as bonded labour, slavery, etc. One of the worst forms of child labour is work which, “by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children”.

Elimination of discrimination in employment

Discrimination (Employment and Occupation) Convention, 1958 (No. 111): the Convention puts the obligation “to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.”

Equal Remuneration Convention, 1951 (No. 100): Article 2 affirms: “Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.”

Outside these ‘core’ international conventions, several other ILO Conventions are directly relevant to businesses (independently of size).

Convention No. 30 on Hours of Work (Commerce and Offices), 1930 states:

- Article 3: “The hours of work of persons to whom this Convention applies shall not exceed forty-eight hours in the week and eight hours in the day, except as hereinafter otherwise provided.”
- Article 4: “The maximum hours of work in the week laid down in Article 3 may be so arranged that hours of work in any day do not exceed ten hours”.

ILO Convention No. 131 on Minimum Wage Fixing (1970)

The Convention requires signatory member states to implement minimum wage mechanisms at a national level. The Convention states that “each Member of the International Labour Organisation which ratifies this Convention undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate.” (Article 1).

Convention No. 155 on Occupational Safety and Health, 1981, which states:

- Article 16:
 1. Employers shall be required to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health.
 2. Employers shall be required to ensure that, so far as is reasonably practicable, the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken.
 3. Employers shall be required to provide, where necessary, adequate protective clothing and protective equipment to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects on health.
- Article 18: Employers shall be required to provide, where necessary, for measures to deal with emergencies and accidents, including adequate first-aid arrangements.

The ILO has also adopted several declarations which are relevant to businesses:

ILO Declaration on Fundamental Principles and Rights at Work 1998:

the declaration is obligatory on all ILO states parties who have committed to respect and promote the principles and rights, whether or not they have ratified the corresponding conventions. The Declaration notably states: “All members, even if they have not ratified the Conventions in question, have an obligation (...) to respect, to promote and to realize, in good faith (...) freedom of association and the effective recognition of the right to collective bargaining.”

ILO Tripartite Declaration of Principles Concerning Multinational Enterprises (MNEs) and Social Policy 2006:

The MNE Declaration provides recommendations in five areas. It encourages enterprises in particular to: obey national laws and respect international standards; contribute to the realisation of the fundamental principles and rights at work; and maintain the highest standards of safety and health at work.

1.1.2. International human rights law

Universal Declaration of Human Rights

The Universal Declaration of Human Rights, adopted in 1948, calls for “every organ of society” to engage with human rights. While it is imprecisely worded and, as such, of little direct use to business, it has great symbolic value, represents a common universal standard to be achieved, and can help guide business toward human rights compliance.

International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966, is one of the two main UN Conventions for the protection of human rights.

European Convention on Human Rights

The European Convention on Human Rights was adopted in 1950 and incorporated into the UK domestic legal system in 2000 through the Human Rights Act. It is one of the key human rights treaties. It protects several rights that are of relevance to the area of business and human rights:

- the right not to be subjected to inhuman or degrading treatment (Article 2);
- the right not to perform forced or compulsory labour (Article 4);
- the right to respect for private and family life, home and correspondence (Article 8);
- the right to freedom of thought, conscience and religion (Article 9);
- the right to freedom of expression (Article 10);
- the right to freedom of peaceful assembly and to freedom of association (Article 11);
- the right not to be discriminated on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status (Article 14)

European Union Charter of Fundamental Rights

The Charter was adopted in 2000 by the EU Member States and incorporated in the Lisbon Treaty, which entered into force in December 2009. It is a comprehensive document which prohibits behaviours and protects rights that other older human rights treaties, such as the European Convention on Human Rights, do not prohibit and protect.

Among such behaviours/rights that are of relevance to business are:

- Human trafficking (Article 5);
- Protection of personal data (Article 8);
- Freedom to conduct a business (Article 16);
- Equality between men and women (Article 23);
- The rights of the child (Article 24);
- The rights of the elderly (Article 25);
- Integration of persons with disabilities (Article 26);
- Workers' right to information and consultation within the undertaking (Article 27);
- Right of collective bargaining and action (Article 28);
- Protection in the event of unjustified dismissal (Article 30);
- Fair and just working conditions (Article 31);
- Prohibition of child labour and protection of young people at work (Article 32);
- Family and professional life (Article 33);
- Environmental protection (Article 37); and
- Consumer protection (Article 38).

UN Declaration on the Rights of Indigenous Peoples 2007

The declaration was adopted in 2007 and is relevant to businesses operating abroad. Arguably, this is of limited relevance to UK SMEs.

ILO Convention 169 on Indigenous and Tribal Peoples (1989)

This Convention is the only binding international human rights instrument on the rights of indigenous peoples. It protects indigenous peoples' land rights and access to natural resources and their right to be consulted prior to the use of their land for developmental projects.

1.1.3. Other instruments

OECD Convention on Combating Bribery of Foreign Public Officials 1997

Article 1 of the Convention enjoins states to make bribery of foreign public officials, including by legal persons (Article 2), an offence in their domestic criminal law, punishable by "effective, proportionate and dissuasive penalties" (Article 3).

OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, 2009

The Recommendation was adopted “to enhance the ability of the 38 states parties to the Anti-Bribery Convention to prevent, detect and investigate allegations of foreign bribery”. Interestingly, it includes a *Good Practice Guidance on internal Controls, Ethics and Compliance*, which is directly addressed to businesses.

UN Convention against Corruption 2003

The Convention requires states to adopt preventive anti-corruption policies and practices (Article 5) and, in particular, to adopt “measures (...) to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures” (Article 12). It also requires states to criminalise both active (giving) and passive (receiving) bribery of national and foreign officials, as well as officials of public international organisations (Articles 15 and 16).

UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, 2003 (the ‘Palermo Protocol’)

This instrument supplements the UN Convention against Transnational Organised Crime 2000. The Protocol purports “(a) to prevent and combat trafficking in persons, paying particular attention to women and children; (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and (c) To promote cooperation among States Parties in order to meet those objectives.” It was ratified by the UK in 2006.

Protocol against the Smuggling of Migrants by Land, Sea and Air, 2004

This instrument supplements the UN Convention against Transnational Organised Crime 2000. As stated in Article 2, “the purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants.” It was ratified by the UK in 2006.

Council of Europe Convention against Trafficking in Human Beings, 2005

The Convention is a comprehensive treaty mainly focussed on the protection of victims of trafficking and the safeguard of their rights. It also aims at preventing trafficking as well as prosecuting traffickers. The Convention applies to all forms of trafficking; whether national or transnational, whether or not related to organised crime. It applies whoever the victim (women, men or children) and whatever the form of exploitation (sexual exploitation, forced labour or services, etc.).

The Convention also provides for the setting up of an independent monitoring mechanism guaranteeing parties' compliance with its provisions. It was ratified by the UK in 2008.

1.2. International guidance

OECD Guidelines for Multinational Enterprises 2011

The *Guidelines* set out recommendations on responsible business conduct addressed to multinational enterprises, which include an encouragement to companies to respect the human rights of those affected by their operations and a chapter on employment and industrial relations. The *Guidelines* also stress the importance of businesses not resorting to bribery or encouraging corruption. There is also a part on supply chains: enterprises should “encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines”.

The UK is a signatory to the guidelines.

The compliance with the voluntary standards set in the Guidelines are monitored by National Contact Points (NCPs). In the UK, the NCP is led by the Department for Business, Innovation and Skills (BIS) in close cooperation with the Department for International Development (DFID) and the Foreign and Commonwealth Office (FCO). The NCP is a non-judicial mechanism for individuals who may have a complaint against a UK company acting abroad.

There has been some criticism of the work of the UK NCP, notably that it lacks independence from Government, that there is a lack of guidance for businesses on the standards to be met, and neither takes sanctions against businesses, nor proposes remedies for individual victims.⁶⁴

The Government has taken on board such criticism and published the results of an initial review of the NCP in January 2009. It concluded that the “NCP’s

performance [had] significantly improved since the revamp (...) although there remains room for improvement". It considered that limited resources remained a risk for the NCP and that higher priority should be given to the promotion of the Guidelines, as opposed to the processing of complaints.⁶⁵

On this issue, the UK Joint Parliamentary Committee concluded: "It is unacceptable for the Government not to have a strategy in place to deal with companies subject to negative final statements by the UK NCP. The credibility of findings of the UK NCP would be enhanced considerably if the Government had a clear and consistent policy on its response to final statements. We recommend that such a policy should be drawn up and disseminated widely."⁶⁶

A new version of the *Guidelines* was released in 2011. More information is available at:

http://www.oecd.org/document/28/0,3746,en_2649_34889_2397532_1_1_1_1,00.html

“Protect, Respect, Remedy” Ruggie Framework 2008 and Guiding Principles for the Implementation of the Framework 2011

In 2008, the UN Human Rights Council approved the UN Special Representative *Framework* on business and human rights. The *Framework* rests on three pillars:

- the state duty to protect against human rights abuses by third parties, including business;
- the corporate responsibility to respect human rights; and
- greater access by victims to effective remedy, both judicial and non-judicial.

The *Guiding Principles* endorsed by the Human Rights Council in June 2011 suggest that companies must respect “at a minimum”, the Universal Declaration of Human Rights, the two 1966 UN Covenants and the eight International Labour Organization core conventions.

More information is available on the Business and Human Rights Resource Centre website: <http://www.business-humanrights.org/SpecialRepPortal/Home>.

International Finance Corporation Policy and Performance Standards on Social & Environmental Sustainability 2006

The International Finance Corporation (IFC) is a member of the World Bank Group. It promotes development through the private sector by providing loans and advisory services.

There are currently eight performance standards that the IFC applies to all investment projects to minimise their impact on the environment and on affected communities. Seven of these standards are directly relevant to human rights: social and environmental assessment of projects; labour and working conditions; pollution prevention and abatement, community health, safety and security; land acquisition and involuntary resettlement; indigenous peoples; and cultural heritage.

The voluntary “Equator Principles” (see below) are based on these standards. The standards are currently being reviewed and the review is entering its final stage (<http://www.ifc.org/policyreview>).

OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones

The tool consists of a standard set of questions that companies might ask themselves when considering actual or prospective investments in weak governance zones. The questions cover the following topics: obeying the law and observing international instruments; heightened managerial care; political activities; knowing clients and business partners; speaking out about wrongdoing; business roles in weak governance societies – a broadened view of self interest.

More information is available at:

http://www.oecd.org/document/5/0,3746,en_2649_34889_36899994_1_1_1_1,00.html

ILO Code of Practice on the protection of workers’ personal data 1997

This code applies to both the public and the private sectors and to the manual and automatic processing of all workers’ personal data (Article 4(1)). The code covers the following areas: collection, security, storage, use and communication of personal data by employers.

1.3. Voluntary initiatives

United Nations Global Compact 2000

The Global Compact is a practical framework for the development, implementation, and disclosure of sustainability policies and practices based on ten principles, which are themselves derived from: the Universal Declaration of Human Rights; the ILO Declaration on Fundamental Principles and Rights at Work; the Rio Declaration on Environment and Development and the UN Convention against Corruption. The principles of relevance for human rights at large are that businesses should:

Principle 1: Support and respect the protection of internationally proclaimed human rights;

Principle 2: Make sure that they are not complicit in human rights abuses.

Principle 3: Uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: Eliminate all forms of forced and compulsory labour;

Principle 5: Achieve the effective abolition of child labour;

Principle 6: Eliminate discrimination in respect of employment and occupation;

Principle 10: Work against corruption in all its forms, including extortion and bribery.

Companies join the Global Compact on an entirely voluntary basis and the framework is non-binding. Companies with less than ten direct employees (micro enterprises) cannot officially join the framework.

More information is available at: <http://www.unglobalcompact.org/>.

Global Reporting Initiative (GRI)

The GRI is the organisation which set up the sustainability reporting framework. Initially created by a non-governmental organisation (NGO), the GRI has become a network of various stakeholders such as representatives of business, civil society advocacy organisations, labour, and mediating institutions. It is funded through grants from governments and foundations, corporate sponsorship and the provision of learning and other services. According to its website, there are currently 20,000 stakeholders from over 80 countries, representing corporations, governments, NGOs, consultancies, accountancy organisations, business associations, rating organisations, universities, and research institutes within the broad GRI network.

The companies which decide to join the initiative are required to produce sustainability reports. Two of the indicator categories are directly relevant to human rights: labour practices and decent work; and human rights itself. In their reports, companies should assess their performances against the standards contained in the Universal Declaration of Human Rights, the two 1966 UN Covenants and the core conventions of the International Labour Organization.

The UK participants include BP, the Association of Chartered Certified Accountants (ACCA) and Oxfam.

More information is available at: <http://www.globalreporting.org/Home>

ISO 26000

ISO 26000 is a standard for social responsibility produced by the International Standards Organisation (ISO). It contains direct reference to human rights, but at this stage the standard acts as voluntary guidance, and not as an accreditation mechanism.

As explained on their webpage:

“ISO 26000:2010 is intended to assist organizations in contributing to sustainable development. It is intended to encourage them to go beyond legal compliance, recognizing that compliance with law is a fundamental duty of any organization and an essential part of their social responsibility. It is intended to promote common understanding in the field of social responsibility, and to complement other instruments and initiatives for social responsibility, not to replace them.”⁶⁷

The guidance provided is on:

“concepts, terms and definitions related to social responsibility; the background, trends and characteristics of social responsibility; principles and practices relating to social responsibility; the core subjects and issues of social responsibility; integrating, implementing and promoting socially responsible behaviour throughout the organization and, through its policies and practices, within its sphere of influence; identifying and engaging with stakeholders; and communicating commitments, performance and other information related to social responsibility.”⁶⁸

More information is available at:

http://www.iso.org/iso/iso_catalogue/management_and_leadership_standards/social_responsibility/sr_iso26000_overview.htm

Social Accountability 8000 (SA8000)

This is a global social accountability standard for decent working conditions, developed and overseen by Social Accountability International. It contains several direct references to international human rights law. SA8000 is an auditable certification standard based on the UN Universal Declaration of Human Rights, the Convention on the Rights of the Child and various International Labour Organisation (ILO) conventions. It works by accreditation.

More information is available at: <http://www.saasaccreditation.org/>

1.4. Voluntary sector initiatives

Voluntary Principles on Security and Human Rights for the Extractive Sector

This is a set of guidelines to help extractive companies (oil, gas and mining) meet the security needs for their staff and operations whilst ensuring that security arrangements do not have a negative impact on human rights in surrounding communities. Current membership across pillars stands at eighteen multinational oil, gas and mining companies, eight NGOs, five governments (including the UK) and three observers.

More information is available at: <http://www.voluntaryprinciples.org/>

Extractive Industries Transparency Initiative (EITI)

This initiative aims to strengthen governance by improving transparency and accountability in the extractive sector. The EITI sets a global standard for companies to publish what they pay and for governments to disclose what they receive.

More information is available at: <http://eiti.org/>.

Ethical Trading Initiative (ETI) Base Code

This is an alliance of retail companies, trade unions, charities and campaigning organisations that work together to improve working conditions in global supply chains. The initiative is global, but being UK-based it also contains some specific guidance for UK-based businesses. Regarding the UK market, one of the central aims of the initiative is to ensure that the working conditions of workers producing for the UK market meet or exceed international labour standards. Basing itself on the ILO Conventions, the Initiative has adopted the ETI Base Code, which notably states that working hours should not be excessive. This means that:

- Working hours comply with national laws and benchmark industry standards, whichever affords greater protection.
- In any event, workers shall not on a regular basis be required to work in excess of 48 hours per week and shall be provided with at least one day off for every 7 day period on average. Overtime shall be voluntary, shall not exceed 12 hours per week, shall not be demanded on a regular basis and shall always be compensated at a premium rate.

The code concerns several other aspects of the working conditions, such as wages or punishment. It states: “Physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation shall be prohibited.”

More information is available at: www.ethicaltrade.org

Fair Labour Association Workplace Code of Conduct

Fair Labour Association (FLA) is a group of companies (mainly in the apparel/footwear industry) universities and NGOs whose aim is to improve working conditions throughout the world. FLA-affiliated companies are required to enforce the code all the way down their supply chain. The Code is based on ILO standards and covers the following areas: forced labour; child labour; harassment or abuse; non-discrimination; health and safety; freedom of association and collective bargaining; wages and benefits; hours of work; and overtime compensation.

More information is available at: <http://www.fairlabor.org/fla/>.

Kimberley Process Diamond Certification Scheme

This is an initiative by governments, the diamond industry and civil society to stem the flow of conflict diamonds. The Kimberley Process Certification Scheme imposes extensive requirements on its members to enable them to certify shipments of rough diamonds as “conflict-free”.

More information is available at:

http://www.kimberleyprocess.com/home/index_en.html

Equator Principles

This is a voluntary set of guidelines for the banking industry based on IFC and World Bank environmental and social guidelines and safeguard policies.

More information is available at: <http://www.equator-principles.com/index.shtml>

Global Network Initiative

Launched in 2008, the Initiative is a framework for the Information and Communications Technology (ICT) sector to help companies respect, protect and advance human rights in countries in which they operate. It aims to help companies worldwide which face increasing government pressure to comply with domestic laws and policies that require censorship and disclosure of personal information in ways that conflict with internationally recognised human rights law and standards.

More information is available at: <http://www.globalnetworkinitiative.org/>

International Code of Conduct for Private Security Enterprises

Adopted in November 2010 the code addresses a wide range of human rights violations private security enterprises may be responsible for or complicit of, including torture; sexual exploitation; human trafficking; forced labour; the worst forms of child labour and discrimination.

The Global Social Compliance Programme Reference Code

The Global Social Compliance Programme (the GSCP) is a group of companies that have made a commitment to respect human rights. The aim of the programme is to harmonise existing efforts in order to deliver a shared, global

and sustainable approach for the continuous improvement of working and environmental conditions across categories and sectors in the global supply chain. UK companies Tesco and Marks and Spencer are participants.

The reference code covers the following areas: forced, bonded, indentured and prison labour; child labour; freedom of association and the effective recognition of the right to collective bargaining; discrimination; harassment and abuse; health and safety; wages and benefits; and working hours.

More information is available at: <http://www.gscpnet.com/>

World Federation of Sporting Goods industry

The federation has a special committee working on CSR issues, but no specific code of conduct incorporating human rights standards.

More information is available at: <http://www.wfsgi.org/>

1.5. Guidance from civil society and non-UK National Human Rights Institutions

1.5.1. International toolkits

Human Rights Impact and Management

Produced under the UN Global Compact with the International Business Leaders Forum and the International Finance Corporation, this document aims to develop practical guidance on Human Rights Impact and Management. The guide has been refined through practical road-testing and introduces an eight-step process which allows business managers to oversee the identification, assessment and implementation of measures that will strengthen their company's contribution to human rights protection.

This provides a practical step by step approach on how to develop a human rights impact assessment. The Guide to Human Rights Impact Assessment and Management (HRIAM) has been revised in 2007 as an interactive online tool on this website: <http://www.guidetohriam.org/welcome>

Developed for companies committed to assessing and managing the human rights risks and impacts of their business activities, the Guide to HRIAM provides guidance on how to:

- Identify any potential and/or existing human rights risks;
- Assess any potential and/or existing human rights impacts
- Integrate findings from the assessment into the company management system

Guide to Integrate Human Rights into Business Management

The Guide to Integrate Human Rights into Business Management is an online tool produced jointly by the Business Leaders Initiative on Human Rights, the UN Global Compact and the Office of the UN High Commissioner for Human Rights.

It offers practical guidance to companies wanting to take a proactive approach to human rights within their business operations and is of use primarily to business leaders and managers in large and medium-sized enterprises, private and state-owned, who would like to develop their understanding of human rights in business practice.

More information is available at: <http://www.integrating-humanrights.org/>

Human Rights Matrix - Business Leaders Initiative on Human Rights

Produced by the Global Business Initiative on Human Rights, the Human Rights Matrix is a web-based, freeware self-assessment tool. It is designed to support companies in understanding human rights in relation to their own policies, procedures and initiatives. The matrix has two dimensions. First, it is structured around the 'Essential' and 'Beyond Essential' steps a business can take to develop and implement its human rights strategy. Second, the interface is designed so that the tool can be completed by business functions and common policy areas within that business function. In the tool, these are called 'Business Areas' and 'Business Sub-Areas'. The tool helps companies to make an assessment and substantiate their assessment with information about their own policies, practices and initiatives.

More information is available at: <http://www.humanrights-matrix.net/>

Human Rights Guidance Tool for the Financial Sector

The Human Rights Guidance Tool for the Finance Sector is designed as “an online signposting tool providing information to lenders on human rights risks”. It

includes some useful general background information on human rights and business. While the tool focuses specifically on human rights issues relevant to the financial sector, it offers a list all the relevant international laws, standards and initiatives in the area of human rights and business. The toolkit was developed by the United Nations Environment Programme Finance Initiative, the Human Rights Work Stream and TwentyFifty.

More information is available at:

<http://www.unepfi.org/humanrightstoolkit/index.php>

1.5.2. National Human Rights Institutions Guidance

The Danish Institute for Human Rights

The Danish Institute is the Danish equivalent of the Equality and Human Rights Commission. The institute has developed several guidance documents for companies, the two most developed being the Human Rights Compliance Assessment and the Country Risk Assessment (CRA).

The Human Rights Compliance Assessment is a diagnostic tool, designed to help companies detect potential human rights violations caused by the effect of their operations on employees, local residents and all other stakeholders. The interactive web-based computer programme allows each company to select questions in the database to suit their type of business and area of operations.

The CRA is a comprehensive report on the human rights risks to business. As well as in-depth descriptions of legal protections and violation risks in practice, the report includes detailed recommendations, topic-specific focal areas and extensive background information on the country in question. The mapping contained in the CRA provides an invaluable guide to ensuring that business operations contribute to development, especially for vulnerable groups. The objective of the CRA is to determine areas where companies are at risk of human rights violations—both direct and indirect—due to ineffective laws or poor practices in the country of operation.

Australian Human Rights Commission

The Commission has developed a programme aimed at employers called “Good practice, good business: Eliminating discrimination and harassment in the workplace”. The standards used are based on domestic Australian law. The

Commission has also developed a number of pieces of practical guidance on business and human rights.

More information is available at:

http://www.hreoc.gov.au/human_rights/corporate_social_responsibility/index.html

1.6. International legal guidance

Human Rights Translated

Human Rights Translated: A Business Reference Guide explains human rights concepts in the language of business through the use of examples and suggested practical actions. The publication is a joint product of the Castan Centre for Human Rights Law, the International Business Leaders Forum (IBLF), the Office of the United Nations High Commissioner for Human Rights, and the UN Global Compact Office.

More information is available at:

http://www.unglobalcompact.org/docs/news_events/8.1/human_rights_translated.pdf

Human Rights Accountability Guide

Produce under the auspices of the Business Leaders Initiative on Human Rights, the guide examines corporate accountability for human rights violations. It is divided into three parts: laws, norms, and values. The publication was written by Chip Pitts, BLIHR Advisor, and lecturer, Stanford Law School, and John F. Sherman, III, Deputy General Counsel of National Grid (retired) and Senior Fellow, Mossavar-Rahmani Center for Business and Government, Harvard Kennedy School of Government.

More information is available at:

<http://www.blihr.org/Legacy/Downloads/Accountability%20Guide%202008.pdf>

How to do Business with Respect for Human Rights: A Guidance Tool for Companies - Global Compact Network Netherlands

This guidance tool is the result of lessons learnt from a Business and Human Rights Initiative led by the local network working with ten Dutch companies. It aims to help companies consider and implement human rights due diligence.

More information is available at:

http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/how_to_business_with_respect_for_human_rights_gcn_netherlands_june2010.pdf

Red Flags Guidelines

Red Flags is a website maintained by the UK-based NGO International Alert and the Norwegian research foundation Fafo. The website highlights business and human rights risks, based on the latest research into recent case law. It provides a guide for law-abiding companies as to how the expectations for compliance are changing.

A Red Flag is a warning of heightened risk. The Red Flags pamphlet and web site provide basic information about the potential for litigation, based on actual legal actions involving businesses or business people and international crimes. Drawing on publicly available information concerning past or present case law, these Red Flags are intended as warnings of liability risk.

More information is available at:

http://www.redflags.info/index.php?page_id=16&style_id=0

International Alert Conflict-sensitive business practice: Guidance for extractive industries

International Alert is an NGO which focuses on peace-building. Recognising the role the private sector may play in conflict zones, it has produced guidance for extractive industries operating in such environments. The guidance includes three practical tools, a screening tool for early identification of conflict risk, a macro-level conflict risk and impact assessment tool and a project-level conflict risk and impact assessment tool.

More information is available at:

<http://www.international-alert.org/resources/publications/conflict-sensitive-business-practice-guidance-extractive-industries>

2. United Kingdom

2.1. Binding legislation

Children and Young Persons Act 1933

Part II gives details for children within the employment field. Sections 18- 24 set out general details as to working hours, holidays and working during school term time.

Equal Pay Act 1970 (and amendments)

The *Equal Pay Act* prevents discrimination between male and female employees in the same job in relation to pay and terms and conditions. It introduced the concept of equal pay for work of equal value. It was repealed by the Equality Act but its contents were incorporated into it.

Health and Safety at Work etc. Act 1974

The *Health and Safety at Work etc Act 1974* is the primary piece of legislation covering work-related health and safety in the United Kingdom. It sets out the employer's responsibilities for health and safety at work.

Trade Union and Labour Relations (Consolidation) Act 1992

The Act defines the rights of individuals to belong to a trade union, and to participate in the activities of their trade union. The Act provides protection against discrimination on grounds of trade union membership and activities.

Protection from Harassment Act 1997

The *Protection from Harassment Act 1997* is designed to protect individuals from harassment and similar conduct. It makes it an offence to carry out a course of conduct that causes harassment, including in the workplace. It does not define harassment, although it makes clear that alarming a person or causing a person distress may constitute harassment. It also creates an offence of putting people in fear of violence being used against them. The Act covers situations where one employee, in the scope of his or her employment, harasses another employee. In such situations, the employer will be vicariously liable for that harassment if a sufficiently clear link between the work and the harassment can be established.

Data Protection Act 1998

The *Data Protection Act* governs the use of personal information by businesses and other organisations. This Act is relevant to companies since they usually handle personal information about individuals (employees). The Act defines eight data protection principles and establishes a number of legal obligations to protect information and the right to privacy of the employees.

National Minimum Wage Act 1998

The National Minimum Wage (NMW) is a legal right which covers almost all workers in the UK. It became law on 1 April 1999 to prevent unduly low pay and also to help create a level playing field for employers.

Human Rights Act 1998

The *Human Rights Act* 1998 (HRA) came into force on 2 October 2000. From that date, the civil, political, economic and social rights and freedoms guaranteed under the European Convention on Human Rights were incorporated into domestic law. This means that rights granted under the Convention may be relied upon directly in UK courts and tribunals. It is now unlawful for any public authority to act in a way that is incompatible with the HRA. The HRA is directly relevant to businesses (independently of size) which are conducting business in a 'public function' capacity. Courts have established a test to define when private entities are acting in a 'public function' capacity, but clearer definition of the concept has been called upon (this is explored more fully in the report).

Working Time Regulations (1998)

Adult workers cannot be forced to work more than 48 hours a week on average - this is normally averaged over 17 weeks. Workers can agree to opt out of this limit, but must do so in writing and not by collective agreement.

Regulation of Investigatory Powers (RIP) Act 2000 & The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000

The *RIP Act* established a basic principle that communications may not be intercepted without consent. The Regulations make an exception to this rule and allow businesses to intercept communications without consent for certain

legitimate purposes such as for quality control and staff training purposes. The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 authorise certain interceptions of telecommunication communications which would otherwise be prohibited by section 1 of the *RIP Act* 2000. The interception has to be by or with the consent of a person carrying on a business (which includes the activities of government departments, public authorities and others exercising statutory functions) for purposes relevant to that person's business and using that business's own telecommunication system.

Freedom of Information Act 2000

Under the Freedom of Information Act, everyone has the right to request information held by public sector organisations. While mainly relevant to public authorities, it also includes the disclosure of information held by persons (including private companies) providing services for public authorities. The Act will also be applicable to contracts signed between public authorities and private enterprises providing goods and services to public authorities. The Act could also be used as a tool for companies to get access to information regarding contracts, bids, compliance and performance data and even information that shapes procurement from public authorities. Not all commercial information has to be disclosed. The Act contains a number of exemptions for confidential data, trade secrets and any other information that could prejudice companies' commercial interests (prejudice to business interests will have to be weighed against the public interest in disclosing information).

Anti-terrorism, Crime and Security (ATCS) Act 2001

Part 12 of this Act includes legislation on bribery and corruption. This came into force on 14 February 2002 to deter UK companies and nationals from committing acts of bribery overseas (including facilitation payments).

Sexual Offences Act 2003

The Act introduces the offences of trafficking of peoples into, within and out of the UK for sexual exploitation (sections 57-59). These trafficking offences came into force in 2004 and carry a maximum penalty of 14 years in prison.

Asylum and Immigration (Treatment of Claimants) Act 2004

The Act establishes the specific offences of trafficking people for labour exploitation. Under section 4(1) a person commits an offence if he arranges or facilitates the arrival in or the entry into the UK of an individual, and a) intends to exploit the person in the UK or elsewhere, or b) believes another person is likely to.

The Gangmasters (Licensing) Act 2004

This Act regulates agencies that place vulnerable workers in agricultural work, shellfish collecting and industries packing. The Act establishes the Gangmasters Licensing Authority. This body is responsible for setting up and operating a licensing scheme for labour providers in agriculture, shellfish gathering and associated processing and packaging sectors.

Employment Relations Act 2004

The Employment Relations Act 2004 concerns collective labour law and trade union rights. The Act was adopted to modify the previous Employment Relations Act of 1999. The Act establishes the procedure for employers to recognise and collectively bargain with a trade union, in any business with over 20 employees. In particular, the Act requires that union members are not subject to any detriment short of dismissal for attempts to organise and also establishes the principle of prohibiting any blacklisting of union members. The Act also includes measures to improve the enforcement regime of the national minimum wage.

Racial and Religious Hatred Act 2006

The Act establishes the criminal offence of stirring up racial hatred against a person on racial or religious grounds. This Act is relevant to companies as it extends the offence from individuals to businesses if it can be shown that the hatred has been stirred up with the consent or connivance of the director, manager, company secretary or any person purporting to act in any such capacity.

Companies Act 2006

The revised *Companies Act* includes reporting requirements. The Board must provide a regular account of how it complies with its duties through an operating

and financial review, a narrative on how the following affect future development: environmental matters, employees, social and community issues. An updated version of the Act is currently being examined.

Immigration, Asylum and Nationality Act 2006

Employers who employ illegal migrants are subject to a civil penalty, or, if they knowingly employ illegal migrants, a maximum penalty of two years' imprisonment and unlimited fine.

Public Procurement Regulations 2006

The Public Contracts Regulations 2006 implement Directive 2004/18/EC on the co-ordination of procedures for the award of public works contracts, public supply contracts and public service contracts. The public procurement regulations are designed to ensure free and fair access to, and competition for, public sector contracts. The regulations apply to all public sector contracts.

This process is currently under revision at the EU level.

Corporate Manslaughter and Corporate Homicide Act 2007

The Act creates an offence of gross negligence corporate manslaughter. This enhances the ability of the UK to meet its obligation to protect the right to life, as guaranteed by Article 2 ECHR.

Health and Social Care Act 2008

The *Health and Social Care Act* 2008 establishes the Care Quality Commission. The Act give the Commission the function of setting up and maintaining a new registration system for providers of health and adult social care who carry out regulated activities. This registration system covers private and voluntary health care providers and adult social care providers.

The most relevant part of the Act is Section 145 which provides that the Human Rights Act applies to a person "who provides accommodation, together with nursing or personal care, in a care home for an individual".⁶⁹

Employment Act 2008 (and 2002)

The *Employment Acts* of 2008 and 2002 establish the legal framework regarding several of the rights of employees regarding compulsory disciplinary

and grievance procedure, statutory maternity leave and new flexible working conditions.

Education and Skills Act 2008

This Act requires young people to continue to participate in education or training post-16 from 2013 (until 17 from 2013 and until 18 from 2015).

Coroners and Justice Act 2009

This Act makes it an offence to hold another person in servitude or subject a person to forced or compulsory labour.

Apprenticeships, Children and Learning Act 2009

The Act introduces a statutory right to make a request in relation to study or training for employees in organisations with fewer than 250 employees. The right to make a request in relation to study or training was introduced for employees in organisations with 250 or more employees on 6 April 2010.

Equality Act 2010

The *Equality Act* brings together nine separate pieces of legislation into one single Act simplifying the law and strengthening it in important ways to help tackle discrimination and inequality. The Act protects people from being treated less favourably because they have a protected characteristic. The relevant protected characteristics in employment are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race (including ethnic or national origins, colour and nationality), religion or belief (including lack of belief), sex, sexual orientation. The Act supports positive action provisions by ensuring that it is not unlawful discrimination to take special measures aimed at alleviating disadvantage or under-representation experienced by those with any of these characteristics.

Employment Relations Act 1999 (Blacklists) Regulations 2010

Regulation 3(1) contains the general prohibition that 'no person shall compile, use, sell or supply a prohibited list'.

Bribery Act 2010

The new legislation was adopted to reform the criminal law of bribery. It received Royal Assent on 8 April 2010. The Bribery Act 2010 will come into force on 1 July 2011. The Bribery Act will replace the fragmented and complex offences at common law and in the Prevention of Corruption Acts 1889-1916. The Act creates two general offences covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage. It also create a discrete offence of bribery of a foreign public official and create a new offence of failure by a commercial organisation to prevent a bribe being paid for or on its behalf (it will be a defence if the organisation has adequate procedures in place to prevent bribery).

2.2. UK Guidance

Foreign and Commonwealth Office (FCO) Business and Human Rights Toolkit

The FCO has adopted a Toolkit for 'good conduct' of UK companies abroad. The toolkit is relevant to large companies operating abroad. It notably states that "UK-registered companies and individuals are breaking UK law if they commit acts of bribery overseas, even if no part of the alleged act took place in the UK." The toolkit focuses primarily on the conduct of business in conflict zones.

More information is available at: <http://www.fco.gov.uk/en/global-issues/human-rights/international-framework/business/>

Government Corporate Responsibility Report 2009

The report was produced by the Department for Business, Innovation and Skills with the cooperation of other government departments across Whitehall. It focuses on the UK Government approach in encouraging the adoption of Corporate Social Responsibility, through best practice guidance, and where appropriate, regulation and fiscal incentives.

More information is available at: <http://www.bis.gov.uk/files/file50312.pdf>

Ministry of Justice's Private Sector and Human Rights Project

In 2009 the Government commissioned a scoping study to understand more about how UK businesses are engaging with human rights. This has led to the publication of a report which examines how UK businesses engage with human rights.

The report is available at:

<http://www.twentyfifty.co.uk/news/art/16/TwentyFifty-launches-report-on-UK-private-sector-and-human-rights.htm>

2.3. Voluntary initiatives and UK certification

Certification by the Fair Trade Foundation

The Fairtrade Foundation is a development organisation committed to tackling poverty and injustice through trade, and the UK member of Fairtrade Labelling Organisations International. Certification and product labelling (through the FAIRTRADE Mark) are the primary tools used.

More information is available at: <http://www.fairtrade.org.uk/>.

Ethical Accreditation by The Ethical Company Organisation

The Ethical Company Organisation offers (for a fee) an Ethical Accreditation, which certifies the company or brand in question has scored highly in an overall analysis of its Corporate Social Responsibility policy. The Ethical Company Organisation undertakes an assessment of the company's records on workers' rights, whether they engage in irresponsible marketing, whether they have links with oppressive regimes and whether they have links with the armaments' industry.

More information is available at: <http://www.ethical-company-organisation.org/>

Business in the Community's Corporate Responsibility Index (CRI)

Released and monitored by Business in the Community, the aim of the CRI is to establish some form of corporate responsibility benchmark for companies to understand the impacts and relative worth of their practices and for city analysts better to understand and value such activities. In practical terms, companies engaging in the CRI reporting process complete a 68-page online survey in

which they answer questions in six categories, being awarded points adding up to 100, based upon their answers.

More information is available at: http://www.bitc.org.uk/cr_index/index.html

2.4. Examples of companies' initiatives

Companies' codes of business ethics

The adoption of such codes by companies is encouraged by the Institute of Business Ethics. Each company is supposed to develop their own.

More information is available at: <http://www.ibe.org.uk/>

Companies' Policy Statements on Human Rights

The business and human rights resource centre provides a list of companies that have adopted policy statements on human rights: <http://www.business-humanrights.org/Documents/Policies>.

Below are examples of UK companies' codes of conduct including direct references to human rights:

Vodafone Code of Ethical Purchasing (CEP)

The Code sets out the standards that Vodafone expect from its suppliers. The CEP is based on international standards, including the Universal Declaration of Human Rights and the International Labour Organization Conventions on Labour Standards.

More information is available at:

http://www.vodafone.com/content/index/about/sustainability/supplychain/code_ethical.html

Shell Business and Human Rights: A Management Primer

This is a guide to human rights for Shell managers. It provides a range of useful information on how to integrate human rights considerations into business practice

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More information is available at:

http://www.shell.com/static/envirosoc-en/downloads/management_primers/business_and_human_rights_primer.pdf

¹ UN Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, A/HRC/17/31, 21 March 2011.

² Parliamentary Joint Committee on Human Rights, "Any of our business? Human rights and the UK private sector", November 2009.

³ *ibid* [217].

⁴ Memorandum submitted by the Ministry of Justice, <http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/5/5we02.htm> (accessed 26 March 2011).

⁵ TwentyFifty, "The Private Sector and Human Rights in the UK", October 2009.

⁶ *ibid* 56.

⁷ *ibid* 55.

⁸ *ibid* 56.

⁹ Recommendation 2003/361/EC, Recommendation concerning the definition of micro, small and medium-sized enterprises of 6 May 2003. It entered into force on 1 January 2005. Enterprises are said to be SMEs if they fulfil certain criteria, which include the number of staff together with a turnover ceiling or a balance sheet ceiling, as summarized in the table below:

| Enterprise category | Headcount | Turnover | OR | Balance sheet total |
|---------------------|-----------|----------------|----|---------------------|
| medium-sized | < 250 | ≤ € 50 million | | ≤ € 43 million |
| small | < 50 | ≤ € 10 million | | ≤ € 10 million |
| micro | < 10 | ≤ € 2 million | | ≤ € 2 million |

¹⁰ For references, see: Department for Business, Innovation and Skills website: <http://www.berr.gov.uk/whatwedo/enterprise/au/statistics/page38573.html> (accessed 26 March 2011)

¹¹ TwentyFifty (n 5) 56.

¹² As quoted in Parliamentary Joint Committee on Human Rights (n 2) [35].

¹³ *ibid* [37].

¹⁴ As quoted in *ibid* footnote 52.

¹⁵ Quiroz-Onate, Aitken, "Business and human rights: a critical assessment of the notion of CSR and measurement", *Journal of International Trade Law & Policy*, 2007.

¹⁶ This is the position adopted by Professor Ruggie. See, UN Human Rights Council, "Protect, Respect and Remedy: a Framework for Business and Human Rights", A/HRC/8/5, 7 April 2008. By contrast, Andrew Clapham suggests that: "overly focusing on the jurisdictional possibilities for holding corporations accountable has obscured the important notion that international law already applies to corporations and is developing the scope of their obligations not to commit or assist in human rights abuses", *Human Rights Obligations of Non-State Actors*, Oxford: Oxford University Press, 2006, p. 268.

¹⁷ China, India and Brazil, however, are not members.

¹⁸ OECD Guidelines for Multinational Enterprises, II.A (13).

¹⁹ See Parliamentary Joint Committee on Human Rights (n 2) [78].

²⁰ *ibid* [80].

²¹ *ibid* [83].

²² David Kinley and Junko Tadaki, 'From Talk to Walk: the Emergence of Human Rights Responsibilities for Corporations at International Law' (2003-2004) 44 *Virginia Journal of International Law* 931, 950-51.

²³ Jernej Letnar Černič, *Human Rights Law and Business, Corporate Responsibility for Fundamental Human Rights*, Europa Law Publishing, 2010, 202-3.

²⁴ *Ibid* 204-5.

²⁵ John Ruggie, "The UN "Protect, Respect and Remedy" Framework for Business and Human Rights", September 2010 <<http://www.reports-and-materials.org/Ruggie-protect-respect-remedy-framework.pdf>> accessed 18 May 2011.

²⁶ *ibid*.

²⁷ UN Human Rights Council (n 1) [14].

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- ²⁸ Guiding Principle 15.
- ²⁹ Guiding Principle 16.
- ³⁰ Surya Deva, 'Corporate Complicity in Internet Censorship in China: Who Cares for the Global Compact or the Global Online Freedom Act' 39 *George Washington International Law Review* (2007) 255, 294-301.
- ³¹ Except to refer to the *Human Rights Act*.
- ³² TwentyFifty (n 5) 31.
- ³³ Institute of Business Ethics <<http://www.ibe.org.uk/index.asp?upid=71&msid=12>> accessed 19 May 2011.
- ³⁴ Freedom of association in practice: Lessons learned, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2008, 21.
- ³⁵ *ibid* [78].
- ³⁶ Anti-Slavery http://www.antislavery.org/english/slavery_today/bonded_labour.aspx (accessed 23 May 2011).
- ³⁷ Gangmasters Licensing Authority, Licensing Standards, April 2009: http://www.gla.gov.uk/embedded_object.asp?id=1013491 (accessed 25 March 2011).
- ³⁸ ILO Website, Child Labour <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/child-labour/lang--en/index.htm> (accessed 24 March 2011).
- ³⁹ The exemptions are: the genuinely self-employed; voluntary workers; workers who are based permanently outside the UK or who are based in the Channel Islands or the Isle of Man; workers who are still of compulsory school age; students on a work placement of less than one year that forms part of a UK further education or higher education course; those taking part in the European Union's Leonardo da Vinci, Youth in Action, Erasmus and Comenius programmes; residential members of a charitable community, the purpose of which is to practice or promote a belief of a religious - or similar - nature; those employed in a Jobcentre Plus Work Trial - but only for the first six weeks of the trial - and those taking part in some government employment programmes: <http://www.businesslink.gov.uk/bdotg/action/detail?itemId=1074403806&r.l1=1073858787&r.l2=1084822773&r.l3=1081657912&r.l4=1074402393&r.s=sc&type=RESOURCES> (accessed 16 June 2011).
- ⁴⁰ International Finance Corporation's Performance Standards on Social & Environmental Sustainability, 30 April 2006, 1.
- ⁴¹ *ibid* 11.
- ⁴² *ibid* 15.
- ⁴³ International Alert, *Conflict-Sensitive Business Practice: Guidance for Extractive Industries*, March 2005.
- ⁴⁴ Transparency International UK, Joint Statement issued on behalf of: CAFOD, Christian Aid, Global Witness, One World Action, Tearfund, The Corner House and Transparency International UK, <http://www.transparency.org.uk/all-news-releases/118-international-anti-corruption-day-puts-spotlight-on-uk-bribery-bill-and-millennium-development-goals> (accessed 28 March 2011).
- ⁴⁵ Commentaries on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Adopted by the Negotiating Conference on 21 November 1997.
- ⁴⁶ For a review on the human rights implications of the Companies Act, see Hannah Ellis and Kate Hodgson, "Directors, Human Rights & The Companies Act: Is the new law any different?" (CORE, Corporate Responsibility March 2011), <http://corporate-responsibility.org/new-report-on-company-law> (accessed 21 March 2011).
- ⁴⁷ UN Global Initiative to Fight Human Trafficking, "Human Trafficking and Business: Good Practices to Prevent and Combat Human Trafficking", 2010.
- ⁴⁸ See Parliamentary Joint Committee on Human Rights (n 2). See also: Joint Select Committee on Human Rights 'The Meaning of Public Authority under the Human Rights Act' (2006-07) 9th Report, HL 77 HC 410.
- ⁴⁹ For illustrations, see: *Poplar Housing and Regeneration Community Association Ltd v Donoghue* [2001] EWCA Civ 595 [2002] QB 48; *YL v Birmingham City Council* [2007] UKHL 27; [2008] 1 AC 95; *Regina (Weaver) v London and Quadrant Housing Trust* [2008] EWHC 1377 (Admin); (2008) 158 NLJ.
- ⁵⁰ See: *R (Heather) v Leonard Cheshire* 2002.
- ⁵¹ See: *R v Hampshire Farmers Market Ltd, ex p Beer* [2002] EWHC 2559 (Admin).
- ⁵² See: Audit Commission, "Human Rights improving public service delivery" (2003).
- ⁵³ See: Minister of Justice, 'Human Rights, Human Lives: A handbook for public authorities'.

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- ⁵⁴ Audit Commission, “Human Rights improving public service delivery” (2003), 14 [27].
- ⁵⁵ Independent home care agencies will continue to fall outside the Human Rights Act 1998 by virtue of the reasoning in the *YL v Birmingham Council*.
- ⁵⁶ For guidance, see: OGC website at: http://www.ogc.gov.uk/documents/Intro_to_EU.pdf.
- ⁵⁷ See: Buying Social: a guide on taking account of social considerations in public procurement, available at: <http://ec.europa.eu/social/BlobServlet?docId=6457&langId=en>
- ⁵⁸ See Public Contracts Regulations 2006 (SI2006 No. 5); The Utilities Contract Regulations 2006 (SI 2006 No. 6)
- ⁵⁹ Note that for Scotland, the relevant act is Public Contracts (Scotland) Regulations 2006.
- ⁶⁰ A certain monetary threshold needs also to be reached, the estimated value of the contract (net of VAT) equals or exceeds the relevant financial threshold.
- ⁶¹ The list of ILO Conventions ratified by the United Kingdom is available at: <http://webfusion.ilo.org/public/applis/appl-byCtry.cfm?lang=EN&CTYCHOICE=0250&hdoff=1>
- ⁶² On collective bargaining, one should mention the European Social Charter, a Council of Europe treaty which was adopted in 1961 and revised in 1996. The Charter sets out rights and freedoms and establishes a supervisory mechanism guaranteeing their respect by the states parties. It concerns several areas relevant to businesses such as the right to strike and collective bargain. The UK has signed but not yet ratified the Charter. Moreover, the UK has not accepted the right of collective complaint under the 1995 Additional Protocol to the Charter, which allows trade unions, employers' organisations or NGOs to bring complaints against states.
- ⁶³ Also note that the Convention on the Rights of the Child, including Article 32, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.
- ⁶⁴ See Parliamentary Joint Committee on Human Rights (n 2) [78].
- ⁶⁵ *ibid* [80].
- ⁶⁶ *ibid* [83].
- ⁶⁷ ISO 26000:2010
http://www.iso.org/iso/iso_catalogue/catalogue_tc/catalogue_detail.htm?csnumber=42546
(accessed 28 March 2011).
- ⁶⁸ *ibid*.
- ⁶⁹ Independent home care agencies will continue to fall outside the Human Rights Act 1998 by virtue of the reasoning in the *YL v Birmingham Council* decision.