

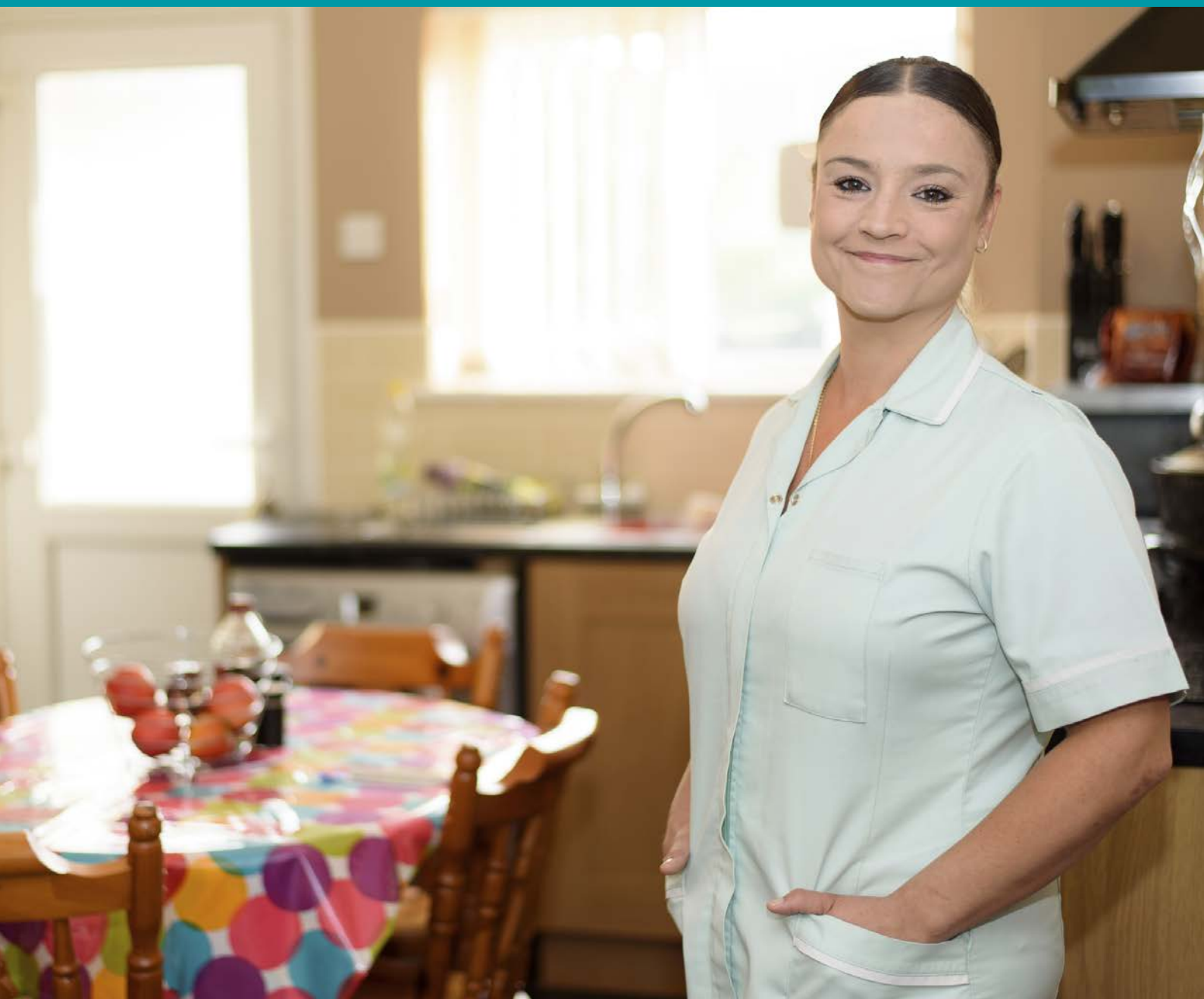
**A Toolkit Guide  
Code of Practice –  
Ethical Employment in Supply Chains  
May 2017**



Llywodraeth Cymru  
Welsh Government

# Code of Practice

## Guide to implementing the Living Wage through Procurement



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This Guide forms part of the Toolkit which supports the ‘Code of Practice – Ethical Employment in Supply Chains’.

This Guide is aimed at any person involved in the supply of goods, services and works, including procurement, contract management and supplier management.

“This guidance has been prepared for information purposes only. The Welsh Government does not warrant the accuracy or completeness of the information contained and does not accept liability for any errors, omissions, or misleading statements included within this guidance. This guidance should not be relied on as a substitute for independent legal advice. Specific advice (legal or otherwise) in relation to an individual’s or an organisation’s own circumstances should be obtained.”

# 1. Introduction

The Welsh Government is committed to ensuring workers are treated fairly and with respect.

The ‘Code of Practice – Ethical Employment in Supply Chains’ has been established to help ensure that workers in public sector supply chains in Wales are employed in a fair and ethical way. The Code covers the following employment issues:

- Modern Slavery;
- Blacklisting;
- False self-employment;
- Unfair use of umbrella schemes and zero hours contracts; and
- **Payment of the Living Wage.**

The ‘Wales Procurement Policy Statement’ (WPPS) sets out the expectations placed on every public sector organisation in Wales. The Code of Practice has been developed to reflect the overall aims and ethos of the refreshed WPPS, and will help to achieve the following Well-Being for Future Generations Goals, as set out in the Well-Being of Future Generations (Wales) Act 2015:

- **A prosperous Wales** – *An innovative, productive and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately (including acting on climate change); and which develops a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work.*

The Code of Practice will contribute to the achievement of this Well-Being Goal by providing better employment opportunities

and supporting long term career development through the improvement of employment practices across supply chains in Wales.

- **A more equal Wales** – *A society that enables people to fulfil their potential no matter what their background or circumstances (including their socioeconomic background and circumstances).*
- The Code of Practice will contribute to the achievement of this Well-Being Goal through supporting the eradication of unfair employment practices across supply chains in Wales.
- **A globally responsible Wales** – *A nation which, when doing anything to improve the economic, social, environmental and cultural well-being of Wales, takes account of whether doing such a thing may make a positive contribution to global well-being.*  
The Code of Practice will contribute to the achievement of this Well-Being Goal through supporting the eradication of modern slavery across global supply chains.

## 2. What is the Living Wage?

In the UK there are two different 'Living Wages':

- The Living Wage (set by the Living Wage Foundation)
- The National Living Wage (the National Living Wage and the National Minimum Wage)

This Guide refers to the former.

### The Living Wage:

The Living Wage is a voluntary hourly rate that is set by the Living Wage Foundation ([www.livingwage.org.uk](http://www.livingwage.org.uk)) based on the cost of living. The Living Wage Foundation encourages organisations across the UK, in all sectors, and of all sizes, to become accredited Living Wage employers.

The wage level is set annually and is based on the cost of living in the UK, calculated by the Centre for Social Policy at Loughborough University [www.lboro.ac.uk/research/crsp/mis/](http://www.lboro.ac.uk/research/crsp/mis/). The level is different in London, and is set by the Greater London Authority.

The Living Wage is calculated by research that includes consultation with members of the public about what is needed by households to have the minimum acceptable quality of living. The incomes required by families of different sizes are calculated separately and then a single Living Wage is calculated from these figures.

At the time of writing (May 2016) the Living Wage is £9.40 in London and £8.25 elsewhere across the UK.

### The National Minimum Wage/ National Living Wage (new minimum wage for people aged over 25):

The National Living Wage was introduced by the UK Government in July 2015 and must be paid to all workers over the age of 25. It is a criminal offence for employers to not pay someone the National Minimum Wage or National Living Wage. The National Minimum Wage is the minimum pay per hour that almost all workers are entitled to. The National Living Wage is higher than the National Minimum Wage - workers get this rate if they are over 25. It is set at the same level throughout the UK and is effectively the new Minimum Wage for over-25s. It is not connected to the cost of living, but is linked to average earnings. The Government has committed to increasing the level annually and it is intended to reach 60% of average wages (approximately £9 per hour) by 2020. Rates are usually updated in April.

Further information on entitlement to National Minimum Wage and National Living Wage including previous years' rates can be found here: [www.gov.uk/national-minimum-wage/what-is-the-minimum-wage](http://www.gov.uk/national-minimum-wage/what-is-the-minimum-wage)

- Current rates (from 1 April 2017) are: £7.50 per hour - 25 yrs old and over;
- £7.05 per hour - 21-24 yrs old;
- £5.60 per hour - 18-20 yrs old;
- £4.05 per hour - 16-17 yrs old; and
- £3.50 for apprentices under 19 or 19 or over who are in the first year of apprenticeship.

It is a criminal offence for employers to not pay someone the National Minimum Wage or National Living Wage, or to fake payment records.



HM Revenue and Customs (HMRC) officers have the right to carry out checks at any time and ask to see payment records. They can also investigate employers if a worker complains to them. If HMRC finds that an employer has not been paying the correct rates, any arrears have to be paid back immediately. There will also be a fine and offenders might be named by the government.

It is the employer's responsibility to keep records proving that they are paying the minimum wage - most employers use their payroll records as proof. All records have to be kept for 3 years.

**This guide relates to paying the Living Wage, as set by the Living Wage Foundation.**

### 3. Legal and regulatory requirements

Payment of the Living Wage Foundation's Living Wage is voluntary, i.e. there is no legal requirement to pay it.

### 4. Why should you pay the Living Wage?

One of the aims of the Living Wage is to help reduce levels of poverty across the UK. Payment of the Living Wage allows people to provide for themselves and for their families, improving their quality of life and expectations for the future. For businesses, paying a Living Wage can improve the quality of work carried out, create a more responsive and flexible workforce, and reduce absenteeism and staff turnover. For society, the Living Wage reduces reliance on benefits and can help reduce social and health inequalities. Lower-paid workers tend to spend money locally, which can be good for business and for the local economy.

Several independent studies have examined the benefits to individuals, families and employers of paying the Living Wage:

- Research by the Equality and Human Rights Commission (2014) found that cleaning firms which started paying the Living Wage reported:
  - reduced absenteeism

- lower staff turnover – with some reporting that staff turnover had fallen to less than 1%; and
- indications from clients of improved service and higher productivity rates.
- Research by London Economics (2009) for GLA Economics found:
  - more than 80% of employers believed that introducing the London Living Wage had enhanced the quality of the work of their staff
  - a majority recognised an impact in reducing absenteeism and sick leave amongst workers, with one organisation reporting a 25% reduction in absenteeism
  - 70% reported reputational benefits; and
  - a majority of employers reported improved recruitment and retention of staff, with two-thirds indicating that the Living Wage had made a significant positive impact on their organisations.

The Welsh Government has been promoting the Living Wage for several years, including a commitment in the previous government's Programme for Government to:

*“Work with Trades Unions, employers and other stakeholders to explore ways of ensuring a Living Wage for every worker in Wales, given that low pay is a significant problem for many families and the challenges of in-work poverty remain.”*

## 5. How to become a Living Wage Employer

The process for becoming accredited as a Living Wage Employer is explained on the Living Wage Foundation's website – [www.livingwage.org.uk](http://www.livingwage.org.uk). The Foundation gives advice and guidance on how to achieve accreditation. The process is also summarised below.

This first requirement, at the point of accreditation, is to ensure that all of your employees are paid at least the Living Wage.

The second requirement, which can be phased-in as contracts come up for renewal, is to ensure that employees of your contractors and sub-contractors who provide a service to, or on behalf of, your organisation are also paid at least the Living Wage<sup>1</sup>. A service provided “to you” would be one provided by a contractor to meet your own needs, for example a contract for cleaning staff. A service provided “on your behalf” would include one that had traditionally been provided by you which has now been outsourced.

This second requirement applies to all employees working two or more hours in any given day in a week, for eight or more consecutive weeks in a year, on your premises, on property owned or occupied by you, or on land you are responsible for maintaining, or on which you are required to work.

The Welsh Government itself became an accredited Living Wage Employer in November 2015, and many other public sector organisations have also made the same commitment. As of June 2016 there were 70 Certified Living Wage Employers in Wales. This compares with approximately 2,631 in the UK as a whole (and 400 in Scotland).

### Cost implications:

The Living Wage may have cost implications for organisations, and these can sometimes be considerable. The Living Wage Foundation gives advice and shares examples of how organisations can manage the extra costs over time. The Welsh Government also recognises the budgetary challenges when wages are increased, particularly in some publicly-funded sectors such as social care. Indeed, in some sectors the implementation of the compulsory National Living Wage poses a significant challenge.

Research on the Living Wage, published by Queen Mary University of London in 2012, concluded that the balance of costs and benefits varies significantly between sectors. Overall wage increases were found to have reached 11% compared with the national minimum wage at that time. However, contract prices only increased by 6%. This indicated that in many cases additional costs were being managed down through, for example:

- moves to fixed-price contracts;
- reductions in head-count and/or hours;
- alterations in service specifications; and
- reduced margins in some cases.

<sup>1</sup> UK Living Wage Employer Licence.

However, these contractors were also benefitting from reduced staff turnover and improved satisfaction of workers.

Case study research with Living Wage employers conducted by the University of Strathclyde in 2014 also found that implementing the Living Wage delivers the most effective financial and social benefits when introduced as part of a wider change management process.

Examples include changing work patterns to more social hours, introducing greater flexibility in working patterns and increasing job variability and skill development opportunities. Employers reported reduced staff turnover; increased worker morale and loyalty; reduced absenteeism; productivity improvements; strengthened recruitment opportunities and long term reputational benefits.

## 6. How can you encourage payment of the Living Wage through procurement?

For private sector businesses and third sector organisations there are no legal restrictions on making payment of a Living Wage a condition of contract, and several large and small organisations have taken this approach. However, care should be taken to ensure that suppliers are not free to cover the costs of increasing staff pay by negatively affecting workers' rights in other areas.

Asking a Fair Work Practices question, rather than requiring the payment of a Living Wage can be a useful approach to achieve this, as it can help ensure that suppliers are not recouping costs of increased wages through exploitative practices or other reductions in workers' rights. Fair working practices could include, for example, fair and equal pay, which could, in turn, include payment of the Living Wage. In this way, payment of the Living Wage could be included as an indicator of fair working practices, alongside other indicators. This means that failure to pay the Living Wage would not necessarily mean that a bidder did not satisfy an overall fair working practices assessment.

Public sector organisations ("Contracting Authorities" in the Public Contracts Regulations

2015) cannot make payment of the Living Wage a mandatory requirement as part of a procurement process, where the rate of the Living Wage is greater than any minimum wage set by, or in accordance with law (the National Minimum/Living Wage in the UK). See the "additional information for public sector buyers" section below for more details. It is therefore not possible to reserve any element of the overall tender score specifically to payment of the Living Wage in the UK. For this reason, and in order to ensure that suppliers are not free to cover the costs of increasing staff pay by negatively affecting workers' rights in other areas, we recommend that you use a Fair Work Practices question in your tenders, where relevant.

Details of how to use a Fair Working Practices question follow below.

### Procurement procedures:

You should review your procurement processes to ensure that they reflect your commitment to paying the Living Wage. It is important however that you consider the impact of any changes on your suppliers. For large suppliers in sectors where many workers are paid the minimum



wage, your business may represent only a small percentage of their operations. These suppliers may seek to recoup from you the costs of increasing wages for all staff, and not only those engaged in delivering a service for you. They may even include an uplift premium for staff in more senior posts. It may be necessary to ask for a clear breakdown of increased costs as a starting point.

In some sectors the cost to suppliers may rise considerably. However, there is plenty of evidence from research showing that these increased costs can be offset to a significant extent by improved productivity and better service to customers. You should not expect to see your supplier's tender price simply increasing in proportion to the percentage increase in pay resulting from moving to the Living Wage.

### Understanding the Market:

Before starting any procurement process, it is important that you develop a good understanding of the relevant market. This will help you to determine the factors that affect workforce pay and conditions, which is essential. In particular you may want to consider:

- Taking a risk-based approach to each procurement to ensure that workforce issues are assessed, understood and managed in all key decisions – this should be completed at the planning stage of each procurement. The Welsh Government's 'Sustainability Risk Assessment (SRA)', whilst developed for public sector buyers, could be a useful tool for any organisation for this purpose – see [www.prp.gov.wales](http://www.prp.gov.wales).
- Determining whether higher levels of pay could have an impact in terms of raising prices for users or decreasing the amount of service that can be provided. This is particularly relevant in certain markets, for example within the care sector, e.g. childcare, home care etc, where public funding is limited.

### Consider including a Fair Work Practices tender question

Including payment of the Living Wage within a question on fair work practices, and evaluating the supplier's overall approach, can help ensure that suppliers do not cover the costs of increasing staff pay by taking away workers' terms and conditions in other ways. You should note that the Living Wage Foundation reserves the right to remove accredited Living Wage Employer status from organisations that behave in this way.

The question should ask bidders to describe the package of measures which demonstrates their positive approach to fair working practices. Care should be taken to ensure that the appropriate weighting is applied to this question compared with price and other quality factors – this will vary depending on the relevant importance of fair working practices to the contract/service being delivered.

An example tender question has been included in Annex A and shows how the Living Wage can be included in a wider question covering several ethical employment issues, such as use of umbrella payment schemes and non-guaranteed (or zero hours) contract. These practices are covered in more detail in other Guides in the Toolkit supporting the Code or Practice on Ethical Employment in Supply Chains.

In addition you may wish to consider:

- Including a copy of your 'Ethical Employment Policy' and 'Whistle-blowing Policy' in all your tender or pre-contract information and raise awareness of them through any 'Meet the Buyer' type events you may hold
- Encouraging suppliers to voluntarily sign up to the Code and agree to implement the Code during the lifetime of the contract. Where appropriate, you may wish to incorporate elements of the Code as conditions of contract.

<sup>2</sup> Clarification obtained from the European Commission by the Scottish Government in preparation of its Statutory Guidance on Addressing Fair Work Practices, including the Living Wage, in Procurement.

### **Additional requirements for public sector buyers**

Public sector buyers (“Contracting Authorities”) must ensure that they comply with the Public Contracts Regulations 2015 (PCR 2015), the Public Contracts Directive 2014 (2014/24/EU) and principles of transparency, equal treatment, proportionality and non-discrimination derived from the Treaty on the Functioning of the European Union. You should also seek legal advice as this Guide is not intended as a comprehensive statement of the law and each procurement exercise will raise different considerations.

Public sector organisations cannot make payment of the Living Wage a mandatory requirement as part of a procurement process, where the rate of the Living Wage is greater than any minimum wage set by, or in accordance with the law (in the UK this includes the National Minimum/Living Wage for most workers). This would represent a restriction on free movement of services in accordance with article 56 of the TFEU. A number of rulings in the European Court of Justice have considered this point (see C-549/13 Bundesdruckerei GmbH v Stadt Dortmund, and C-346/06 Rüffert v Land Niedersachsen). A more recent case has altered the court’s view to some extent, but this case involved a minimum wage set by a regional law whereas the Living Wage is voluntary in the UK (see RegioPost GmbH & Co. KG v Stadt Landau in der Pfalz C-115/14 - Press Release No 139/15 of the Court of Justice of the European Union). Where there is likely to be cross-border interest in the contract, the Posted Workers Directive provides that workers who are temporarily posted from one EU Member State to another by their employers are entitled to the same minimum employment rights as those permanently located in the host Member State. These rights are limited however to rules set down by law, regulation or administrative provision, and would therefore not include the Living Wage. The European Commission issued advice to the Scottish Government in relation to fair working practices in procurement, including the Living Wage.

Public sector buyers are recommended to use a Fair Work Practices question where relevant. You should first consider whether it is relevant and proportionate to include a question on Fair Work Practices, to be evaluated alongside other criteria, satisfying yourself that the quality of delivery is likely to be affected by the conditions of the workforce. In particular you should consider whether:

- employees will be coming into contact with service users, members of the public and/or your organisation’s employees, and/or will spend time on your premises;
- there is any history of unethical work practices having a negative impact on quality of services
- there is a history of low pay in the sector, with employers seeking to cut costs by reducing staff pay and conditions
- there is a risk of unethical or illegal employment practices such as false self-employment, or inappropriate use of zero hours contracts or umbrella companies (See Guide to Tackling Unfair Employment Practices); or
- there is evidence of poor recruitment and retention in the sector.

If one or more of these factors apply to the contract then fair work practices are likely to be relevant and you should consider including a question or questions about these in your invitation to tender. Some of these fair work practices are covered in more detail in the other Guides in the Toolkit supporting the Code of Practice for Ethical Employment in Supply Chains.

Payment of the Living Wage can be encouraged through the procurement process using this approach, but it will remain just one indicator amongst other factors. You should make sure you can justify each part of any Fair Work Practices question you plan to include in your tender. Overall you should ensure you achieve the appropriate balance between quality and cost for the contract.

The PCR 2015 requires there to be a link between any evaluation criteria and the subject matter of the contract (see regulation 67 below). So it would be helpful to include a reference, within your description of your contract, to your policies around ethical employment, along with a statement to the effect that you seek to achieve fair and non-exploitative working practices within your contracts.

Your evaluation of bidders' responses to the Fair Work Practices question needs to be conducted in a proportionate, objective, transparent and non-discriminatory way, in light of the fact that individual responses may describe different approaches to fair working practices, depending, for example on the size of the organisation.

Public sector buyers are referred to the provisions in the PCRs 2015, which support ethical sourcing. Some of the regulations that may be applicable to the subject matter of this Guide, (and the related Guide to tackling Unfair Employment Practices) are summarised below, however you must refer to the Regulations themselves for the full terms of the regulations ([www.legislation.gov.uk/ukxi/2015/102/pdfs/ukxi\\_20150102\\_en.pdf](http://www.legislation.gov.uk/ukxi/2015/102/pdfs/ukxi_20150102_en.pdf)).

- Regulation 67 stipulates that award criteria must be linked to the subject matter of the contract. You can include social (including workforce matters) and trading considerations within your contract award criteria provided they are linked to the subject matter of the contract.
- Regulation 70 allows you to include special conditions relating to the performance of a contract, which may include social or employment-related considerations, provided they are linked to the subject-matter of the contract and were included in the contract notice and/or tender documentation.
- Regulation 71 allows you to ask the tenderer to indicate in its tender any share of the contract that it may intend to subcontract to third parties and any

proposed subcontractors. Making use of this provision can make your supply chain more transparent.

### **Contract management processes and related documentation**

You should review and amend your contract documents, including your Standard Terms and Conditions, to reflect your commitment to paying the Living Wage, or becoming an accredited Living Wage employer. If you have included the Living Wage and/or fair work practices as evaluation criteria and/or conditions of contract then these should be included in arrangements for regular contract management and monitoring. Changes that you might consider making include the following:

- Including a reference or link to your 'Ethical Employment Policy' on your purchase orders, invoices, goods receipt notes etc
- Including discussions on payment of the Living Wage within all Contract review meetings with your suppliers. These discussions should focus on steps that each party has taken towards implementing the Living Wage
- Including a clause in all contracts allowing inspection of supplier premises. This clause should give you the rights to carry out audits and speak directly to supplier's employees and to request information on the pay, terms and conditions of staff delivering the contract.

Wherever possible you should look to retrospectively build these in to existing contracts through discussions with your current suppliers.

If you are a public sector buyer, Reg. 70 permits you to include contract conditions relating to social and employment-related considerations, provided they are linked to the subject-matter of the contract and provided you included in these in the call for competition and procurement documents.

### Assess your existing suppliers:

Before you take any steps in relation to your existing supply base you will first need to carry out a supply chain mapping exercise to help you understand:

- the suppliers in your supply chain(s)
- the goods or services each supplier provides.

A good source of information to start with is your finance system. Extract a list of all your creditors from the last year who supplied goods, works or services and remove any non-procurement related payments such as:

- entries that relate to payments to staff/individuals e.g. for expenses
- entries that relate to standard payments such as business rates etc
- carry out a de-duplication exercise so that a supplier is only listed once.

Next, for each supplier:

- Identify the goods or services that they supply to you
- Identify where the service is delivered or performed.

Completing the above steps will give you a categorised listing of all of your direct suppliers who provide a service to you and whose employees work on your premises, on property owned or occupied by you, or on land you are responsible for maintaining, or on which you are required to work.

If you are, or plan to become, an accredited Living Wage Employer, mapping your existing suppliers will enable you to identify contracts where employees of your contractors and sub-contractors are not currently paid at least the Living Wage.

## 7. Living Wage outside of the UK

The Code of Practice on Ethical Employment in Supply Chains is designed to be adopted by each organisation for its own operations and those of its immediate suppliers, and the intention is that it would then be shared along supply chains.

In many cases supply chains will involve organisations based in other parts of the world, where the Living Wage Foundation's Living Wage would not apply, and where there will be many different laws and levels of minimum wages in place. Some countries have their own (voluntary and/or statutory) Living Wage. Depending on the risks of labour exploitation in the relevant market or geographical location you should ensure, where possible, through the contracting process, that businesses are paying fair wages to their employees.

One definition of a fair wage (from Labour Behind the Label – a campaign to improve conditions and empower workers in the global garment industry, [www.labourbehindthelabel.org](http://www.labourbehindthelabel.org)) is one

which enables workers to meet their needs for nutritious food and clean water, shelter, clothes, education, health care and transport, as well as providing a small discretionary income.

It should be enough to provide for the basic needs of workers and their families, to allow them to participate fully in society and live with dignity. It should take into account the cost of living, social security benefits and the standard of living of others nearby.

Finally, it should be based on a standard working week of no more than 48 hours, before overtime, and should apply after any deductions. Overtime hours should be paid at an overtime rate and be properly and clearly recorded on wage slips.

The Guide to Tackling Modern Slavery and Human Rights Abuses gives advice on sources of information for carrying out this analysis and examples of organisations providing audits in these high-risk areas.

## Annex A – Example Invitation to Tender question on Fair Work Practices

This is an example of a tender question you might use to assess potential suppliers' commitment to fair work practices, and paying the Living Wage. It is based on the sample Invitation to Tender question in the Scottish Government's Statutory Guidance<sup>3</sup>.

The question should be adapted to be more specific about your requirements, and those work practices that are relevant to the subject matter of the contract.

### Question Guidance:

\*\*\*\*\* [Insert organisational name] has adopted the Welsh Government's Code of Practice on Ethical Procurement in Supply Chains. This is designed to ensure that high-quality public services are delivered throughout Wales by a workforce that is treated legally, fairly and safely, and is well rewarded. This Code includes a commitment to consider promoting the Living Wage in relevant contracts. Evidence of fair work practices may include:

- a fair and equal pay policy that includes a commitment to paying all staff at least the Living Wage;
- becoming an accredited Living Wage Employer;
- ensuring that all staff have access to training and development opportunities;
- promoting equal opportunities for all staff regardless of age, gender, disability, religion, race and sexual orientation;
- stable employment, avoiding inappropriate use of zero-hours contracts, and umbrella employment firms;

- flexible working arrangements to allow support for carers, and for family-friendly working;
- supporting workforce engagement, for example Trade Union recognition and representation, or other arrangements for empowering staff.

In order to ensure high standards of service quality in this contract we expect contractors to take a similar approach in relation to ethical working practices.

### Tender Question:

*Please describe how you will commit to fair working practices for workers engaged in the delivery of this contract (including any agency or sub-contracted workers).*

Answers need not be constrained to the examples given in the guidance alongside this question. Good answers will reassure evaluators that your company takes a positive approach to ensuring that your workers are subject to fair work practices, receive fair pay and have opportunities to develop skills.

<sup>3</sup> Statutory Guidance on the Selection of Tenderers and Award of Contracts – Addressing Fair Work Practices, including the Living Wage, in Procurement. Scottish Government, October 2015.