

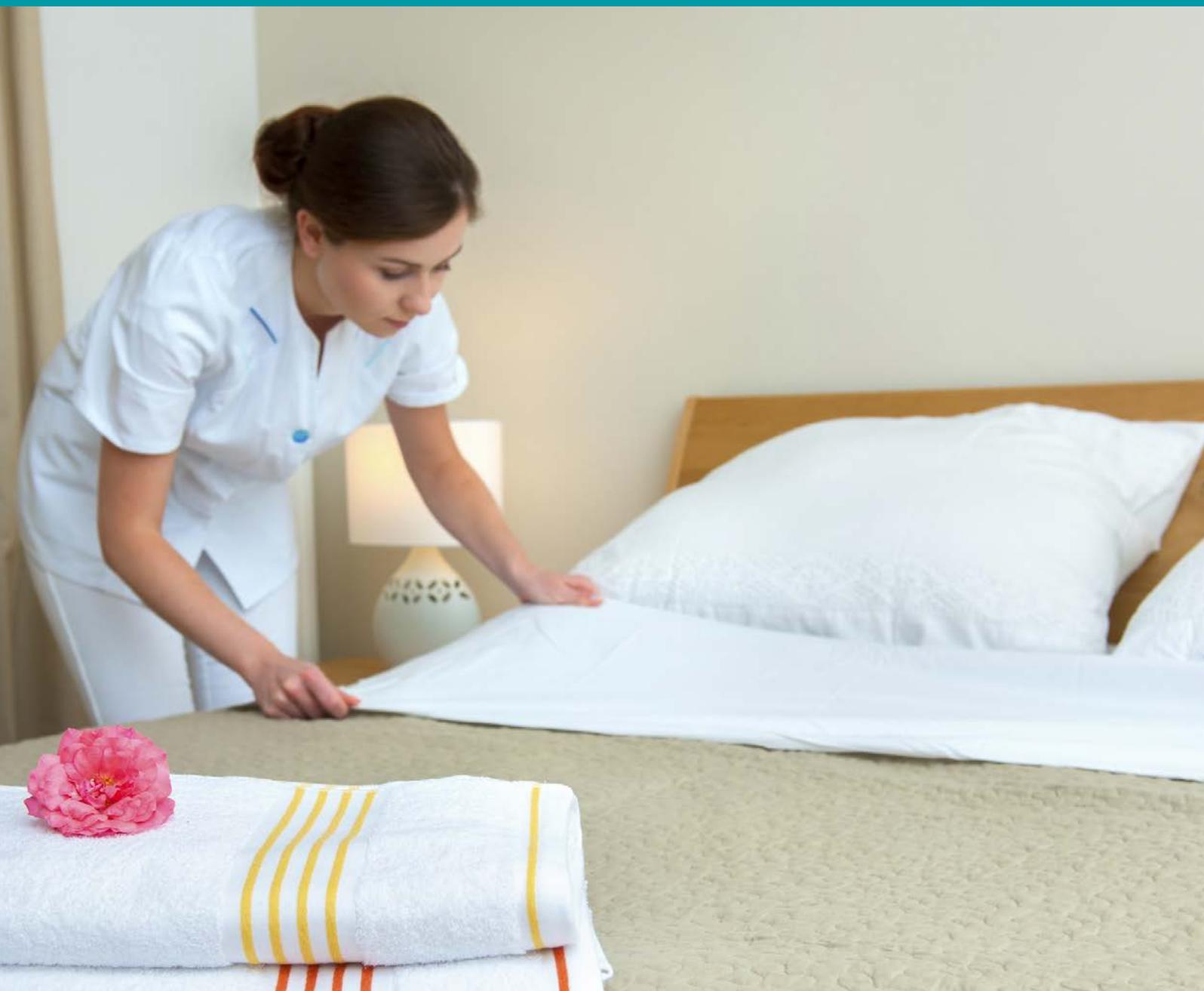
**A Toolkit Guide
Code of Practice –
Ethical Employment in Supply Chains
May 2017**



Llywodraeth Cymru
Welsh Government

Code of Practice

Example questions, conditions and policies



Contents

Part A – Example Procurement Questions	3
Part B – Example Contract Conditions	6
Part C – Discretionary Exclusion Questions	8
Part D – Whistleblowing Policy Template	10
Part E – Ethical Employment Policy Template	12

In signing up to the Code of Practice on Ethical Employment in Supply Chains you are committing to take a number of actions within your own organisation and with your suppliers. This document contains examples of procurement questions, contract conditions and policy templates you may wish to use, or adapt for use, within your own procedures.

Part A – Example Procurement Questions

This section includes some examples of questions you can ask bidders during a procurement process to assess and compare their performance on ethical employment matters. They are not exhaustive lists, and you should assess which subjects apply to the market sector or the product or service you are buying and use the list below as a guide. You should take care to ask only those questions that are directly relevant and important, and those that you can realistically expect your bidders to be able to answer.

For some of these questions you may wish to assess and score suppliers' responses, and attach relative weightings to these scores as part of a tendering process. For others it may be appropriate to set minimum standards of acceptability against the criteria, and so allow potential suppliers to de-select themselves if they cannot comply.

In procurements subject to the Public Contracts Regulations 2015 thinking about whether you should set standards against the criteria or ask questions about them will also help you to decide whether to include questions at the selection or award stage. You will also need to ask questions relating to the criteria for mandatory and discretionary exclusions. See Part C below for more details and refer to the relevant Guides.

Modern Slavery

- What steps have you taken/do you plan to take to tackle modern slavery and human rights abuses within your organisation and supply chains?
- Can you confirm you are abiding by all applicable employment laws?
- Can you confirm you are not subject to any ongoing investigations or charges in relation to modern slavery and/or human rights abuses?
- Can you confirm you are not aware of any ongoing investigations or charges within your supply chain in relation to modern slavery and/or human rights abuses?
- Please provide details of your human rights due diligence processes.
- Do you provide training on modern slavery and human rights abuses for your staff involved in supply chain management?
- Do you identify sourcing countries or regions where there is a high risk of human rights abuse?
- How many workers do you employ, and on what basis (e.g. direct, agency staff etc)?
- How do you ensure that all of your workers are aware of their rights?
- Do all of your workers have employment contracts in place?
- Can you confirm that all workers are paid in line with relevant national pay rates (these are the National Minimum/Living Wage rates in the UK)?
- Do you have a policy stating the minimum age for employment in line with national law or international minimum standards, whichever is higher?
- Do you have a zero-tolerance policy on violence, exploitation and abuse of children, including sexual exploitation?
- Are workers charged for items which are necessary for them to perform their role e.g. uniforms, Personal Protection Equipment etc?
- Are all workers free to leave to find work elsewhere?
- Can you confirm that no worker has had to pay for employment?
- Can you confirm that workers' passports are not retained?

- Are all workers free to join a Trade Union/ collective agreement?
- Do you have an effective whistle-blowing/ grievance mechanism in place?

Blacklisting

- Have you committed an act which contravenes the Blacklist Regulations 2010 within the last three years?
- Have you taken any steps to put matters right (“self-clean” in a public procurement context) where the practice of blacklisting has been identified?
- What processes do you have in place to ensure that details about your workers are protected to ensure they are not included on prohibited lists (blacklisting)? Do these processes comply with the Data Protection Act?
- What percentage of your workforce is engaged through employment intermediaries? Where relevant, what processes are in place for ensuring that employment intermediaries comply with the Data Protection Act?
- What steps do you take to ensure that your subcontractors, i.e. employment agencies, have not been involved in the practice of blacklisting?
- Are all of your workers free to leave to find work elsewhere on their own terms?
- Are all of your workers free to join a Trade Union or collective agreement?

Tackling Unfair Employment Practices

- What policy and processes do you have in place for moving workers on zero hours contracts on to a regularised-hours contract when they are working regularised hours? Do these processes include regular reviews and opportunities for staff to request a change of contract?
- Do you offer new employees the option to be directly employed as well as the choice of being engaged via an employment

intermediary, as self-employed or on a zero hours contract?

- Do you have fair and open recruitment processes for appointing staff on zero hours contracts?
- Do you have clear criteria in place for allocating work fairly and consistently between staff?
- What period of notice do you give when expecting staff on zero hours contracts to undertake work?
- How do you ensure you give appropriate consideration to workers’ (on zero hours contracts) other responsibilities such as study, childcare and caring responsibilities?
- Do you compensate staff when cancelling work at short notice?
- Are workers engaged on zero hours contracts provided with paid-for induction and other relevant training and development opportunities?
- Are workers on zero hours contracts provided with a line manager and arrangements for discussing achievements, challenges and career aspirations?
- Are workers on zero hours contracts enrolled into a qualifying pension arrangement? Is this set out clearly in recruitment information and terms of appointment?
- What processes do you have in place for handling agency workers who have worked with your organisation for more than 12 weeks (in line with the Agency Workers Regulations 2010)?
- What processes do you have in place to ensure that your workers engaged on a self-employed basis should not in fact be treated as employees?
- Can you confirm that self-employed workers are paid in line with relevant national pay rates, and are entitled to paid holiday leave and sick leave?
- What percentage of your workforce is engaged through employment intermediaries?

- What processes do you have in place for ensuring that workers engaged through employment intermediaries are not employed on unfair umbrella schemes, unfair zero hours contracts or on a false self-employment basis?
- How many workers do you employ and on what basis (e.g. direct, agency staff etc)?
- Are all workers aware of their rights and do they have employment contracts in place?
- Can you confirm that all workers are paid in line with relevant national pay rates (these are the National Minimum/Living Wage rates in the UK)?
- Are workers charged for items which are necessary for them to perform their role e.g. uniforms, Personal Protection Equipment etc.

- Are all workers free to join a Trade Union/ collective agreement?

Living Wage

Example Invitation to Tender question on Fair Work Practices – used to cover Living Wage and other employment practices as set out above.

The box below contains 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 Guidance¹.

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.

Fair Work Practices

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.

¹ 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.

Part B – Example Contract Conditions

Disclaimer: The example conditions of contract set out below have been prepared for illustrative purposes only. The Welsh Government does not provide any warranties or make any representations on their appropriateness or accuracy and does not accept liability for any reliance on or use made of them. Specific legal advice should always be obtained when compiling terms and conditions of contract which should be tailored to an individual's or an organisation's own circumstances. These conditions should not be relied on as a substitute for independent legal advice.

- (i) In performing the Contract the [Supplier] shall comply with all applicable statutory obligations for the time being in force including (without limitation) those relating to health, safety and welfare, environment, modern slavery, employment rights and relations, working rights, human rights, data protection and equality.
- (ii) The [Supplier] warrants and represents that all the information contained in its tender remains true, accurate and not misleading except as may have been specifically disclosed in writing to and accepted by the [Client] prior to the commencement date.
- (iii) The [Supplier] shall not operate its business in a manner which may in the opinion of the [Client] bring the [Client] into disrepute.
- (iv) The [Supplier] shall supply the [goods/services] in accordance with the following [insert description of the relevant Code/Standard/Permit/Permission/Policy].
- (v) The [Supplier] shall not subcontract the performance of all or part of its obligations under this Agreement without the prior written consent of the [Client]. The [Supplier] shall provide such information on its subcontractors as the [Client] may from time to time request.
- (vi) The [Supplier] shall provide such information as the [Client] may from time to time request on the [Supplier's] supply chain for the [goods/services] provided.
- (vii) The [Supplier] shall provide such information as the [Client] may from time to time request in respect of any [recruitment/employment] agencies used by the [Supplier] in order to provide the services including (without limitation) information on the [recruitment/employment practices and procedures] used by those agencies.
- (viii) The [Client] shall be entitled to inspect and examine the [Supplier's] premises from which the [services/goods] are [supplied/stored/provided] on request and to speak directly to the Supplier's employees.
- (ix) The [Supplier] shall ensure that its subcontractors and suppliers have accepted obligations equivalent to those set out in clauses [insert reference to the clauses dealing with modern slavery and human rights AND/OR employment and working practices] of these terms and conditions.
- (x) The [Contract Price] shall be paid [in arrears] to the [Supplier] [in monthly/quarterly instalments] for [goods/services] supplied to the satisfaction of the [Client] within [30 calendar days] of receipt [and agreement] of a valid invoice containing the following information [INSERT] and supported by any other documentation required by the [Client] to substantiate the invoice.

- (xi) The [Client] may terminate the Contract by notice with immediate effect if the [Supplier] is the subject of a claim for breach of the Human Rights Act.
- (xii) The [Client] may terminate the Contract by notice with immediate effect if the [Supplier] is the subject of formal investigation, or the subject of a claim arising, in connection with its statutory obligations relating to employment rights,

employment relations, working rights or equality.

- (xiii) An example contract condition specific to the Modern Slavery Act 2015:

The [Client] may terminate the Contract by notice with immediate effect if the [Supplier] is the subject of formal investigation for or is the subject of prosecution for any offence under the Modern Slavery Act 2015.

Part C – Discretionary Exclusion Questions

The questions below are for contracts subject to the Public Contracts Regulations 2015.

SQuID reference: SA.GEN.02

Note to buyers: You cannot apply an automatic exclusion to any of these criteria. You will need to consider each one on a case by case basis, **assessing any evidence that suppliers have self-cleaned.**

SQuID reference: SAGen002a01v02

Regulation 57 (8) of the Public Contracts Regulations 2015 sets out discretionary grounds on which a bidding organisation may be deemed ineligible to tender for, or be awarded, a public contract. Should it become apparent to the buying organisation that any of the following situations has applied to your organisation within the past 3 years, or currently applies to your organisation, you may be excluded from the procurement. Select “Yes” if you wish to discuss any of these matters with the buying organisation.

- a) your organisation has violated obligations in the fields of environmental, social and labour law
- b) your organisation is bankrupt or is the subject of insolvency or winding-up proceedings
- c) your organisation is guilty of grave professional misconduct, which renders its integrity questionable
- d) your organisation has entered into agreements with other economic operators aimed at distorting competition
- e) your organisation has a conflict of interest with the buying organisation which cannot be remedied
- f) the prior involvement of your organisation in the preparation of the procurement procedure has resulted in a distortion of competition which cannot be remedied
- g) your organisation has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract which led to early termination of that prior contract, damages or other comparable sanctions
- h) your organisation has been guilty of serious misrepresentation in supplying information during a procurement exercise, or has withheld such information or is not able to submit the supporting documentation
- i) your organisation has attempted to unduly influence the decision-making process of the contracting authority, or to obtain confidential information; or has negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

Answer: Yes/No

The buyer may exclude you from participation in a procurement procedure if, having investigated the circumstances, any of these grounds for exclusion is found to apply.

If you are bidding as, or on behalf of, a consortium, you should check with all members of the consortium whether or not these grounds for exclusion might apply.

The buyer may include additional questions covering some of these grounds more specifically, for example, on conflicts of interest, on employment practices such as Blacklisting and False Self-Employment and on offences under Equalities, Environmental and Health and Safety legislation. See Regulation 56(2) for more details.

SQuID reference: SA.GEN.04

SQuID reference: SAGen004a01v01

Have you, or has your organisation been found to have employed the practice of ‘blacklisting’ in the last three years?

Answer: Yes/No

SQuID reference: SAGen004b01v01

If you answered ‘yes’ to question SA.GEN.04a please include details here, outlining the circumstances, including actions you have since taken to put matters right, as described in the guidance to this question.

Answer: Explanation outlining actions taken.

If you or your organisation has used or run prohibited lists within the last 3 years, as defined in The Employment Relations Act 1999 (Blacklists) Regulations 2010, you must disclose this.

The buyer may deem you ineligible to tender unless you can demonstrate adequate evidence of ‘self-cleaning’ (see Regulation 57 (13)- (17)). The measures you have taken will also be evaluated taking into account the gravity and particular circumstances of the misconduct.

If you are bidding as, or on behalf of, a consortium, you should check with all members of the consortium whether or not these grounds for exclusion apply. Select “Yes” if these grounds apply to any consortium member.

Part D – Whistleblowing Policy Template

We recommend that your Whistleblowing Policy covers all of the aspects of ethical employment included within the Code of Practice on Ethical Employment in Supply Chains:

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

Considerations

When developing your policy you may want to consider:

- nominating a board member or senior person to have overall accountability for the policy and its implementation
- who the policy will apply to, for example this may only include employed staff and individuals who have suffered, or witnessed incidents, but it could also extend to suppliers (including those further down the supply chain), business partners, investors other stakeholders
- aligning the policy with existing legislation and regulatory requirements
- aligning the policy with your Ethical Employment policy
- where the policy will be published and how it will be disseminated
- how compliance will be monitored and how non-compliance will be identified, investigated and remedied
- making use of some of the support and guidance available to ensure that the policy is followed.

Any processes implemented should not preclude access to judicial or other state-based processes, or undermine the role of legitimate trade unions.

Content

Your policy might include:

- definitions of each of the ethical employment issues covered – these can be found in the toolkit Guides – and the types of concerns that can be raised under the policy
- your organisation’s values and how these impact upon staff and suppliers
- the roles and responsibilities of those involved in the whistleblowing process – staff, managers, HR etc
- the process and mechanism for raising suspicions of poor employment practices, including whom to contact, and the information that will be required, and any differences between this process for internal staff and external stakeholders
- the process for handling and investigating reported allegations reported, including who will be notified about the concerns and in what way, the actions that will be taken subsequently, the people who will take action and the expected timescales
- your approach to confidentiality and fairness for all parties involved, including how you will handle requests for anonymity, how concerns can be reported anonymously, and the relevant Data Protection Act requirements
- your approach to handling malicious or vexatious allegations
- how the process aligns with other external bodies, e.g. trade unions and police

- your grievance procedure for reporting concerns related to the whistleblowing process
- the steps you will take to support workers who have spoken up, and your approach to providing remedy and/or compensation where necessary
- other processes and procedures that will be affected by the policy e.g. procurement, supplier management, contract management, HR and recruitment processes, including staff management and disciplinary procedures how you will raise awareness of the policy, for example through training, inductions, staff and supplier briefings etc
- the reporting and management of associated risks.

Part E – Ethical Employment Policy Template

We recommend that your Ethical Employment Policy covers all of the aspects of ethical employment included within the Code of Practice on Ethical Employment in Supply Chains:

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

Considerations

When developing your policy you may want to consider:

- nominating a Board member or senior person to have overall accountability for the policy and its implementation
- appointing an Ethical Employment Champion who will be responsible for the policy and its implementation
- who the policy will apply to, for example this may only include employed staff, but it could also extend to suppliers (including those further down the supply chain), business partners, investors and other stakeholders
- aligning the policy with existing legislation and regulatory requirements
- aligning the policy with your whistleblowing policy
- where the policy will be published and how it will be disseminated
- how compliance with the policy will be monitored and how non-compliance will be identified, investigated and remedied
- making use of some of the support and guidance available to ensure that the policy is implemented.

The Verite website also includes sample provisions for use in codes of conduct: www.verite.org/helpwanted/toolkit/suppliers/improving-codes-conduct-company-policies.

The policy should be clear, unambiguous and written in plain language. Where you work directly with suppliers based overseas you should consider translating the policy where necessary, to ensure that foreign workers are able to understand it.

Content

Your policy might include:

- definitions of each of the ethical employment issues covered – these can be found in the toolkit Guides;
- your organisation's values and how these impact upon staff and suppliers
- your employment standards – these could be general and/or industry-specific, for example:
 - for tackling modern slavery and human rights abuses it is worth considering using existing standards such as the International Labour Organisation's (ILO) 8 Core Conventions, the UN Convention on the Rights of the Child, or the Ethical Trade Initiative's Base Code (www.ethicaltrade.org/eti-base-code)
 - for wider employment issues it may be worth using industry specific standards e.g. the Freelance and Contractors Association's Code of Conduct, International Recruitment Integrity System's Code of Conduct
- your organisation's stance on engaging workers – through direct employment, or via recruitment or employment agencies, or by using employment businesses

- your organisation's approach to sub-contracting work, for example the circumstances in which sub-contracting takes place, and whether you need to approve all sub-contractors
- your organisation's stance on using employment businesses, recruitment agencies, labour providers, including the payment of recruitment fees
- your organisation's stance on costs and timescales pressures placed on suppliers; e.g. avoidance of abnormally low prices or non-industry standard timescales, ensuring fair payment terms and fair delivery timescales etc
- your organisation's stance on Blacklisting and freedom of association
- your organisation's stance on paying the Living Wage Foundation's Living Wage (in the UK) and fair wages (overseas)
- your approach to monitoring global supply chains, for example whether you use supply chains which extend abroad, and whether you exclude certain countries that pose a high risk of labour exploitation
- your approach to supply chain management and monitoring – risk assessment, auditing, reviews, due diligence checks
- the consequences of non-compliance e.g. remediation versus contract termination – and under what circumstances e.g. child labour, slave labour, unfair employment contracts
- the steps that are taken in your organisation to support workers who have spoken up
- other processes and procedures that will be impacted by the policy e.g. procurement, supplier checks, supplier management, contract management, HR and recruitment, staff management
- how you will raise awareness of the policy, for example through training, inductions, staff and supplier briefings etc
- the reporting and management of associated risks.

Where child labour is identified as a risk area within your supply chains you should consider developing child labour remediation guidance, including a remediation process, that can be followed by managers and suppliers to ensure children's safety and rights are upheld and their best interests are served at all times. The application of any child labour remediation guidance should take account of local and national laws in the country of operation, particularly related to the national minimum age of employment and to identify tasks that are considered hazardous and prohibited for those under 18 years of age.