



House of Lords
House of Commons
Joint Committee on
Human Rights

**Human Rights and
Business 2017: Promoting
responsibility and
ensuring accountability:
Government Response
to the Committee's Sixth
Report of Session 2016–17**

First Special Report of Session 2017–19

*Ordered by the House of Lords
to be printed 10 January 2018*

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

Current membership

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Publication

Committee reports are published on the Committee’s website at www.parliament.uk/jchr by Order of the two Houses.

Evidence relating to this report is published on the relevant [inquiry page](#) of the Committee’s website.

Committee staff

The current staff of the Committee are Eve Samson (Commons Clerk), Simon Cran-McGreehin (Lords Clerk), Samantha Godec (Deputy Legal Counsel), Katherine Hill (Committee Specialist), Penny McLean (Committee Specialist), Shabana Gulma (Specialist Assistant), Miguel Boo Fraga (Senior Committee Assistant), and Heather Fuller (Lords Committee Assistant).

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First Special Report

The Joint Committee on Human Rights published its Sixth Report of Session 2016–17, [Human Rights and Business 2017: Promoting responsibility and ensuring accountability](#) (HC 443) on 5 April 2017. The Government's response was received on 13 December 2017 and is appended to this report. The Committee has also received a letter from Angela Constance MSP, the Scottish Government Cabinet Secretary for Communities, Social Security and Equalities, which is included as Appendix 2.

In the Government response, the Committee's recommendations are in bold text and the Government's responses are in plain text.

Appendix 1: Government Response

The UK's Government's approach to human rights and business

UK leadership

The UK was the first state to implement the United Nations Guiding Principles on Business and Human Rights by publishing a National Action Plan, and by updating that Plan. The Government has also introduced some welcome legislation, including the Modern Slavery Act 2015. Additionally, the UK has supported a number of other countries to develop National Action Plans and implement the UN Guiding Principles. We commend the Government for the work that it has already undertaken to build its agenda on human rights and business. (Paragraph 50)

Criticisms of the updated National Action Plan

While acknowledging the leadership the Government has shown in producing the updated National Action Plan, we share the disappointment of many of our witnesses over its modest scope and lack of new commitments. It is difficult to evaluate progress on the older commitments in the absence of a baseline study or a timetable for meeting objectives. (Paragraph 59)

We call on the Government, when producing the next update to the National Action Plan, to consult widely with a range of stakeholders, to develop more ambitious and specific targets, and to implement measures to allow for these targets to be evaluated. (Paragraph 60)

The Government welcomes the Committee's acknowledgement that the UK was the first country in the world to produce a National Action Plan to implement the UN Guiding Principles on Business and Human Rights. The Government has introduced and supported both legislative and non-legislative measures to ensure compliance and foster greater respect among UK business for human rights.

While the Government acknowledges the comments about the level of ambition in the updated National Action Plan, it is important to understand that the plan was an update rather than a new plan in its own right. This served to re-affirm the importance the Government attaches to business and human rights and to communicate widely to

interested parties the progress that has been made both on commitments contained in the original plan and on actions that the Government has undertaken or supported that were not previously included. It also reflected international and domestic developments in the field of business and human rights, including the Modern Slavery Act.

The forward-looking commitments in the updated plan are focussed on encouraging and supporting the implementation of the UN Guiding Principles in other countries, including through the development of National Action Plans and lobbying, with the aim of creating certainty and a level playing field for UK business.

There are currently 17 States (including the UK) with a National Action Plan in place, while a further 32 States are in the process of developing their own National Action Plan.

The Government expects that the UK National Action Plan should run, on the basis of its original and incremental commitments, until at least 2020. The Government would consider whether to update or devise a new plan on that timescale. This timeframe would also enable us to take account of a growing set of National Action Plans overseas, as well as other important initiatives, such as the Corporate Human Rights Benchmark and the UN Guiding Principles Reporting Framework.

The Government shares the Joint Committee's view of the importance of consulting a range of stakeholders when it comes to considering next steps with the National Action Plan. The Government consulted widely before publishing the National Action Plan and it will engage with stakeholders to inform future decisions on ambition, priorities and targets, on monitoring, and on what basis it should measure progress.

Officials from the devolved administrations have contributed to the UK-level business and human rights steering group, and the UK Government has kept the devolved administrations informed of its activities. Furthermore, the UK Government is aware that the devolved administrations are themselves active in relation to business and human rights:

- The Scottish Government is working with the Scottish Human Rights Commission, Scottish Enterprise and other partners to develop a National Action Plan to implement the UN Guiding Principles in Scotland, building on the UK's Action Plan. A national baseline assessment (NBA) on the implementation of business and human rights standards in Scotland was published in October 2016 to underpin the development of the Scottish NAP.
- In Northern Ireland a Business and Human Rights Forum has been established by the NI Human Rights Commission, with cross-departmental support, to share good practice, and as a means of engaging with the UK National Action Plan. The Northern Ireland Human Rights Commission published a document on "Public Procurement and Human Rights in Northern Ireland". Following this report, Central Procurement Directorate is working in collaboration with the Commission to produce a Procurement Guidance Note for Human Rights in Procurement. Central Procurement Directorate has also identified a number of pilot projects which incorporate specific Human Rights clauses. These pilots will be monitored and evaluated throughout the duration of the contracts.

- In the Welsh Government have established a 'Code of practice: Ethical employment in supply chains'. This code commits public, and third sector organisations to a set of actions that aim to eliminate modern slavery, human rights abuses, tackle illegal and unfair employment practices. Public and third sector organisations that receive funding from Welsh Government, either directly or via grants or contracts, and businesses involved in Welsh public sector supply chains will be expected to sign up to the code.”

Should the Committee wish to find out more about the specific actions taken by devolved interests in overall UK work to implement the UNGPs, it may wish to direct further questions to the appropriate Scottish, Welsh or Northern Irish Ministers.

The wider governmental approach to business and human rights

Issues relating to human rights and business cut across at least six different Government Departments. The Government must do more to help relevant stakeholders understand the various departmental responsibilities and must guard against prioritising business concerns over human rights. We also recommend that the Cabinet Office plays a role in coordinating activity across Departments. (Paragraph 71)

The Government agrees with this recommendation in part. As the Committee's report shows, the business and human rights agenda extends across a number of policies and regulations. The Government is keen to help stakeholders to navigate these. The National Action Plan and its subsequent update summarise how departments are contributing across their areas of policy and regulation. The Department for Business, Energy and Industrial Strategy (BEIS) will now set alongside these documents on www.gov.uk a summary table, for periodic update, which tracks progress against the National Action Plan and subsequent, additional policy commitments. The webpage will also be enhanced to include further links to policy announcements relevant to business and human rights. The Government wants to make it easier for stakeholders to track progress on this important agenda across departments and their policy responsibilities.

We acknowledge the Joint Committee's desire to see a mechanism to oversee NAP implementation. We believe the nature of Government engagement with business means it is important that all departments should each take responsibility for their areas and share updates on progress at meetings at a Steering Committee. We will discuss with other departments who convenes that group, which has currently been coordinated by FCO and BEIS, as the two departments responsible for the publication and update of the NAP, but will ensure that it includes all interested departments and devolved administrations.

Public sector procurement

The current Government guidance on the application of human rights considerations to public sector procurement is confusing, and may deter procurement officers from factoring in human rights. (Paragraph 85)

If the Government expects businesses to take human rights issues in their supply chains seriously, it must demonstrate at least the same level of commitment in its own procurement supply chains. (Paragraph 86)

The Government should exclude companies that have not undertaken appropriate and effective human rights due diligence from all public sector contracts, including contracts with local authorities, which could be over a specified threshold. This should also apply to export credit and other Government financial incentives for companies to operate overseas. (Paragraph 87)

Companies that have been found to have been responsible for abuses, either by the courts or by the National Contact Point, or where a settlement indicates that there have been human rights abuses, should also be excluded from public sector contracts for a defined and meaningful period. (Paragraph 88)

Public procurement in the UK is generally governed by the Public Contracts Regulations 2015 implementing EU Directive 2014/24/EU on Public Procurement, and the WTO Government Procurement Agreement.

Procurement Policy Note 01/16 (the “PPN” referenced in the report) reminds public authorities of their longstanding legal obligations under these domestic and international rules, which include a duty to treat suppliers fairly and equally and not to discriminate against suppliers, including on the basis of their nationality. A blanket ban or boycott in public procurement would be inappropriate and may be unlawful, outside of where formal legal sanctions, embargoes and restrictions have been put in place by Government. The PPN does not in itself create any new obligations and reflects existing policy that has been in place for many years.

This guidance is consistent with the procurement commitment made in the 2016 Updated National Action Plan on Business and Human Rights to ensure that the procurement rules allow for human rights-related matters to be reflected in the procurement of public goods, works and services.

Wider policy objectives such as economic, employment-related, social and environmental considerations can be taken into account as long as they are linked to the subject matter of the contract and suppliers are treated equally and without discrimination. Additionally, the Public Contracts Regulations provide for various grounds, including human rights considerations, under which suppliers must or may be excluded from a specific procurement process at the initial selection stage.

The Government already demonstrates a high level of commitment to human rights issues in its own supply chains.

Bidders who have been convicted of child labour or human trafficking offences under the Modern Slavery Act 2015 are excluded from any procurement process under the Public Contracts Regulations 2015. Exceptions are subject to the bidder demonstrating restorative or corrective measures which the contracting authority considers are sufficient.

Contracting authorities may also exclude a bidder who is guilty of grave professional misconduct or who has violated environmental, social and labour law, for example through unlawful discrimination, failure to comply with the national minimum wage, forced labour and other employment related rights as well as other national laws (known as discretionary exclusion grounds).

Businesses with an annual turnover of £36m or more are required under section 54 of the Modern Slavery Act 2015 to publish an annual 'slavery and human trafficking statement' setting out the steps they have taken to ensure that modern slavery is not taking place in their business and supply chains.

The cross-Government supplier assessment questionnaire now requires bidders to self-certify that they have published a statement in accordance with the requirements of section 54. Failure to do so is likely to amount to a violation of social and labour laws, which would allow the public authority to exclude that bidder from the procurement process (as referred to above, known as a discretionary exclusion ground).

If a public authority considers that a discretionary exclusion ground applies, the bidder can be excluded, unless they can provide sufficient evidence that they have taken steps to rectify the situation and demonstrate their reliability.

In addition, economic, employment, social and environmental considerations may feature as award criteria under the Public Contracts Regulations as long as these are linked to the subject matter of the contract and are not discriminatory. Contracting authorities may therefore factor into the evaluation process human rights considerations relating to the way in which the products and services are produced or provided.

In October 2016, the Crown Commercial Service published its "Procuring Growth Balanced Scorecard". This advises how contracting authorities may ensure that value for money is fully considered and reflected in the procurement process including by considering broader policy matters, such as social factors that take full account of the value offered by bidders.

In a complementary step, the Government has published a Supplier Code of Conduct. This acts as a statement of good practice and summarises clearly how suppliers to Government should behave.

A bidder cannot be excluded from the procurement process specifically for not having undertaken human rights due diligence. A bidder may be excluded where it has violated environmental, social or labour law. The same exclusion provisions relate to local authority contracts. Potential exclusion on environmental, social or labour grounds encourages bidders to conduct their own due diligence.

Contracting authorities can also further encourage due diligence through the inclusion of human rights contract award criteria where these relate to the subject matter of the contract. Associated contract conditions and contract management activities can then be used to monitor human rights compliance throughout the contract term.

Separate from the procurement considerations described above, UK Export Finance (UKEF) undertakes its own due diligence, including human rights due diligence, in accordance with HMG's OECD obligations. This is set out in UKEF's Environmental, Social and Human Rights (ESHR) policy. In undertaking its due diligence and within the scope of its obligations, UKEF works with companies to ensure that relevant human rights aspects are suitably addressed prior to issuing support.

Companies that have been found responsible by the courts of certain types of abuses are, under the Public Contracts Regulations, already subject to exclusion. Such exclusion is mandatory for child labour and human trafficking convictions. The period of exclusion in such a case is five years from the date of the conviction.

Contracting authorities may also exclude a bidder for grave professional misconduct, violation of environmental, social and labour law, including unlawful discrimination, failure to comply with the national minimum wage, forced labour and certain employment related rights and other national laws. The period of exclusion in such a case is three years from the date of the relevant event.

These comprise the only permissible grounds for exclusion under the Public Contracts Regulations relevant to human rights issues. Accordingly it would not be possible for exclusion to be based solely upon decisions of the OECD National Contact Point (NCP), nor where a settlement indicates that there have been human rights abuses.

The UK's NCP can in some circumstances make determinations on whether a company has breached the standards set out in the OECD Multi-National Enterprise Guidelines. However, the Guidelines are a voluntary set of standards for responsible business conduct, and the NCP is a non-judicial mechanism whose primary purpose is to reach a mediated agreement between parties to a complaint, and to promote compliance with the Guidelines.

As such, the NCP mechanism is not a formal legal process and it would be inappropriate to make binding legal decisions based on its findings.

Preventing human rights abuses by businesses

Modern Slavery Act 2015

The Government is to be applauded for the passing of the Modern Slavery Act 2015, which built on the previous Government's creation of the Gangmasters Licensing Authority, under the Gangmasters (Licensing) Act 2004. The Government has shown genuine leadership, and the issue of modern slavery has been raised in the boardrooms of large companies. (Paragraph 111)

However, the legislation has shortcomings. In particular, there is no central list of companies required to report. This, coupled with the fact that the reporting requirements on transparency in supply chains are weak, makes it very difficult to hold companies to account. (Paragraph 112)

The Government is grateful for this acknowledgement and pleased that the Committee heard evidence that the Modern Slavery Act is having beneficial effects. The Government remains committed to leading the fight against modern slavery.

The Government does not agree that the reporting requirements are weak. Every year, thousands of businesses must now publish an annual statement setting out the steps they have taken to ensure modern slavery is not taking place in their business and supply chains. The report recognises that the impact of the legislation is to get the issue of modern slavery in supply chains discussed at the highest levels of companies. The UK is the first country

in the world to introduce such ambitious transparency requirements on modern slavery, and reports from business suggest that the regulation has created a step change in supply chain due diligence.

The Government took a decision not to be prescriptive about what a statement must contain. The legislation applies to a very broad range of businesses, so we did not want to impose a one-size-fits-all approach or create a 'tick box exercise' encouraging companies to take a minimum legal compliance approach.

Instead, requiring businesses to set out the steps they have taken allows businesses to report in the most appropriate way for them, while still enabling consumers, investors and campaigners to hold businesses to account and bring pressure to bear if they are not taking sufficient action. We expect to see continual improvements on the steps businesses are taking to prevent modern slavery as we enter the second year of compliance with this legislation. This approach is intended to encourage innovation and continuous improvement, rather than minimum compliance.

The legislation applies to all commercial organisations which carry on a business or part of a business in the UK supplying goods or services and have an annual turnover of £36m or more, even if they are based abroad. We have considered in detail whether the Government could publish a list of the businesses covered by the Modern Slavery Act. Where possible we want to facilitate and encourage the effective scrutiny of transparency statements, but there are a number of practical difficulties with producing a list. For example, although Companies House is working to make their data more readily accessible, it is not currently possible to filter their database by turnover size.

For the time being at least, we have concluded that demand for a list can be better met by the private sector which holds more comprehensive and easily accessible data. Our current focus will remain on promoting good practice and driving progress from the front. We are determined to continue to work with businesses to ensure that all large businesses report properly and take effective action to force these crimes out of their supply chains.

The Government is determined to ensure that these statements can be used to hold companies to account as intended. There is anecdotal evidence that this policy is having a beneficial effect but we will continue to consider whether any further steps may be needed in the future to amplify the value of company statements to customers, shareholders, investors and activists.

We therefore urge the Government to facilitate the passage of Baroness Young of Hornsey's Modern Slavery (Transparency in Supply Chains) Bill, which would rectify some of these problems, and which is supported by a number of large UK companies. If that bill fails to be enacted in the present parliamentary session, we recommend that the Government bring forward its own legislation in the next session to achieve a similar objective. (Paragraph 113)

Baroness Young of Hornsey's Bill was not able to progress once Parliament was dissolved for the general election in June 2017.

As the Committee's report identified, the Bill sought to amend the Modern Slavery Act 2015 to:

- include public bodies in the transparency in supply chains requirements of the Act;
- require companies and public bodies to publish their statements in their company reports;
- require the Secretary of State to compile a list of companies that should be compliant with Transparency in Supply Chains;
- prevent public bodies from procuring services from companies that have not conducted due diligence.

These are all important issues, but we do not think that further primary legislation is necessary to make progress in these areas. The issue of publishing a list of applicable companies has been addressed above.

In terms of public procurement, we have added a question to the cross-Government procurement selection questionnaire, so that we can assess whether suppliers to Government are compliant with the Modern Slavery Act. Home Office officials are working with the Crown Commercial Service to determine what steps we could take with our suppliers to get more information about our supply chains and identify and address any modern slavery risks.

The Government is committed to working with its suppliers to improve the action we can take together to address modern slavery in our supply chains, especially in high risk sectors. As addressed before, we have added a question to the cross-Government supplier selection questionnaire, so that we can assess whether would-be suppliers to Government are compliant with the Modern Slavery Act, and take action if not. Home Office is also working together with the Government's Crown Commercial Service to enhance existing measures, including how the Home Office Modern Slavery assessment tool can be used more widely.

Commercial organisations can already choose to include their transparency statements or a variation thereof, in their annual reports and accounts where it is material for an understanding of the business. We do not think it should be mandatory to include transparency statements in annual reports and accounts because we want to retain flexibility for businesses to publish these statements in the most appropriate way for them. We have also received representations from some businesses that this proposal could have unintended consequences because annual reports carry different legal risks and so could encourage minimal disclosures.

In July 2017, Baroness Young of Hornsey introduced a new Transparency in Supply Chains Bill which includes provisions similar to the previous Bill and some amendments. The Government is considering the Bill as it progresses through parliament.

We also recommend that the Government bring forward legislative proposals to make reporting on due diligence for all other relevant human rights, not just the prohibition of modern slavery, compulsory for large businesses, with a monitoring mechanism and an enforcement procedure. (Paragraph 114)

The UK Government partially agrees and has consistently been at the forefront of improving the level of transparency of company reporting, including in respect of human

rights. The UK was one of the first countries to require large companies, from 1 October 2013, to produce an annual strategic report in which they have to include information on human rights issues “necessary for an understanding of the business”.

More recently, the Government last year introduced legislation to require certain large companies to produce annual reports from January 2017, in which they must disclose a more defined and strengthened set of information, not least the due diligence arrangements which they have in place on a number of issues including human rights. These new requirements will apply to reporting for financial years beginning on or after 1 January 2017.

The Government has also announced recently, following consultation on a Corporate Governance Reform green paper, that it will introduce secondary legislation to require all companies of significant size (private as well as public) to explain how their directors comply with their duty in section 172 of the Companies Act 2006 to have regard to the interests of employees, the impact of the company’s operations on the community, the desirability of the company maintaining a reputation for high standards of business conduct and other matters.

The Government keeps under review its regulatory approach to non-financial reporting of large companies in the UK economy, including on issues relevant to human rights. The Government notes the Committee’s recommendation to regulate further on due diligence from businesses across issues relevant to human rights, but is concerned that overlaying further requirements may not be proportionate at this stage. It is important to monitor and review business reporting, especially where requirements have been introduced relatively recently.

The Government wants to encourage more UK-based businesses to speak up and explain how they safeguard human rights in their operations. We supported the development of the UN Guiding Principles Reporting Framework, a comprehensive framework tool that helps to enable companies to report on human rights issues. Unilever became the first company to use the framework when they published their ground-breaking human rights report in July 2015, a move that has since been echoed by other businesses. We encourage more businesses in the UK to be clearer about what they are doing on human rights.

The Gangmasters Licensing Authority and the Gangmasters & Labour Abuse Authority

Our witnesses acknowledged the improvements the Gangmasters Licensing Authority has made in its sectors. While we welcome the extended powers that will be given to the Gangmasters and Labour Abuse Authority, we urge the Government to ensure that the new body is properly resourced. (Paragraph 128)

We recognise the evolving nature of labour market exploitation and the measures introduced by the Immigration Act 2016 were designed to help tackle this.

As the first Director of Labour Market Enforcement, Professor Sir David Metcalf CBE will help to bring focus and co-ordination to the enforcement of labour market legislation. He

will be responsible for setting the strategic priorities for labour market enforcement in his annual strategy and outlining the role of each of the three main enforcement bodies (including the Gangmasters and Labour Abuse Authority (GLAA)) in delivering them.

Within this new landscape, the GLAA will have an essential role in tackling labour market exploitation, including modern slavery and that is why we have brought into force provisions to give its officers powers under the Police and Criminal Evidence Act 1984 to investigate serious cases of labour market offences under the Employment Agencies Act 1973, the National Minimum Wage Act 1998, the Gangmasters (Licensing) Act 2004 and Parts 1 or 2 of the Modern Slavery Act 2015.

We recognise that the GLAA will need more resources to reflect its changing and broader functions. That is why the GLAA has been provided with increased resources of £2.5m in 2017/18.

The GLAA Board will continue to be responsible for overseeing delivery of the GLAA functions and ensuring that their work delivers the broader strategy that will be set by the Director.

Further consideration should be given to extending the Authority's licensing powers to other sectors. In particular, we see merit in introducing a licensing system for the construction industry. UK businesses selling clothes have also expressed support for licensing in the garment sector, which would help them to have confidence in their UK supply chains, and we support this proposal. (Paragraph 129)

The licensing scheme administered by the GLAA regulates UK businesses that provide workers to the fresh produce supply chain and horticulture industry, to ensure that they meet the employment standards required by law.

UK employers and labour providers in all sectors are regulated by a range of legislation and enforcement agencies – some by normal employment law, some by the GLAA and many more by Employment Agency Standards Inspectorate (EAS). Construction and others are also regulated by the Health and Safety Executive (HSE).

The Government believes that the question of amendments to the licensing regime should be informed by an understanding of the threat of exploitation in different sectors and the full range of options for tackling this. The Director of Labour Market Enforcement sought evidence on the case for extending licensing to other sectors from stakeholders in his recent consultation and we understand that he may cover this in his first full strategy, which is expected to be published in Spring 2018. .

Anti-Slavery Commissioner

Engagement with the business sector must be a priority for the Anti-Slavery Commissioner if he is to reduce labour exploitation. We encourage the Commissioner to make this his top priority, and we urge the Government to provide further resources to enable this. (Paragraph 135)

The Commissioner is independent from Government and his remit is set out in the Modern Slavery Act 2015. It is for the Commissioner to decide how best to discharge his statutory

functions, and to account for how activity that he undertakes falls within his remit. The Commissioner made engaging with the private sector one of his priorities in his strategic plan and this was covered most recently in his 2016–2017 Annual Report

The Commissioner plays a crucial role in the UK's fight against modern slavery and the Government has increased the amount of resources it has provided. The Government allocated £500,000 to the Independent Anti-Slavery Commissioner in 2015/16 and £575,000 in 2016/17.

Local authorities

We recommend that the Government should bring forward legislative proposals to grant powers to local authorities to close down premises which are found to exploit workers through underpayment of wages, lack of employment contracts or significant disregard of health and safety regulations. These new powers must be fully resourced and should be drawn up in consultation with the Gangmasters & Labour Abuse Authority, the Local Government Association and HMRC. In the event of a closure order, the local authority should also be given powers to compel the employer to compensate workers in the premises. (Paragraph 137)

The proposal to extend the power of local authorities to enable them to close premises which are found to exploit workers through underpayment of wages, lack of employment contracts or significant disregard of health and safety regulations does not take account of the significant variance in the scale of potential offences. Developing a dispersed enforcement regime could produce inconsistencies in approach, potentially leading to a disjointed enforcement approach.

The Government has strong and established state enforcement mechanisms to protect workers' rights which include:

- National Minimum Wage (NMW) and National Living Wage (NLW), enforced by Her Majesty's Revenue and Customs (HMRC) on behalf of Department for Business, Energy and Industrial Strategy;
- Domestic regulations relating to employment agencies, enforced by Employment Agency Standards Inspectorate (EAS);
- Licences to supply temporary labour in high risk sectors in the agricultural, horticultural, shell fish gathering and food processing and packaging supply chain, enforced by the Gangmasters and Labour Abuse Authority (GLAA);
- Health and Safety at work, enforced by the Health and Safety Executive (HSE); and
- Parts of the Working Time Regulations, enforced by HSE and other sector-specific regulators, as well as local authorities.

Under the Immigration Act 2016, the Government created the statutory role of the Director of Labour Market Enforcement to bring together the work of the GLAA, EAS, and HMRC's National Minimum Wage team to ensure enforcement efforts are

coordinated and targeted. The Director also oversees the central intelligence hub, which will provide a single view of risk, across the spectrum of non-compliance, and will inform joint enforcement operations.

The Government believes that retaining a strong and coordinated regime best protects workers' rights. The Government is keen to support joint initiatives that maximise state enforcement agencies expertise, while making best use of local knowledge and intelligence.

Businesses' approach to auditing, trade unions and preventing human rights abuses

The companies that gave evidence to this inquiry have recognised some of the issues in their supply chains and have shown a willingness to improve standards. These companies would also welcome more regulation by the Government, so as to improve the practices of all companies. (Paragraph 148)

The Government disagrees with this conclusion. Businesses should demand responsible practices from their networks of suppliers. The Government's approach has been to promote transparency from companies about their operations through regulating non-financial reporting and encouraging voluntary disclosure of ethical policies.

The Government notes the Committee's recommendation for Government to regulate on supply chain practices. However, suppliers which operate in the UK are bound by the same legislative requirements on aspects such as workplace conditions as all other businesses here. It would be difficult to hold to account UK-based companies contracting with suppliers overseas for any human rights abuses that occur in the overseas suppliers' operations. The Government does not have the ability to regulate the operations of supplier businesses in other jurisdictions. However, the UK has been encouraging other countries to develop their national action plans in such a way as to deliver a focus on business and human rights across their policies and improve their regulatory framework.

The Government expects business to play a leading role in promoting good practice in supplier relationships. It notes the evidence from the Committee's inquiry of how businesses themselves have demonstrated a willingness and ability to improve standards of supply chains collaboratively. The Government welcomes initiatives from businesses and business groups to promote high standards across their supplier relationships.

There is still a tendency by many companies to rely on audits, which, the evidence suggests, are not always effective. The Government must provide clearer and more specific guidance to companies about the risks that may present themselves in different supply chains. It should also oblige UK-owned companies to require the recognition of trade union membership of employees as a condition of contracts with suppliers. (Paragraph 149)

The Government agrees that guidance on human rights risks including through supply chains may be useful to some sectors but we do not agree that such guidance should come from Government alone. Businesses, their sectors and trade bodies understand the risks which are most relevant to their industries, and are best placed to support each other to develop advice. The Government welcomes sectoral initiatives to develop guidance on human rights in their supplier relationships.

Several examples exist of sector-specific guidance on implementing the UN Guiding Principles and, by extension, context-specific approaches to due diligence, including through supply chains. For example, last summer the Stronger Together consortium and the British Retail Consortium issued a tool kit for the consumer goods industry on tackling modern slavery in global supply chains, providing practical resources and training based on the UN Guiding Principles on Business and Human Rights framework, and helping businesses to comply with the UK Modern Slavery Act's requirements. A further, earlier example was the initiative of the International Tourism Partnership, which produced a know-how guide for the hotel industry.

The Government notes the Committee's recommendation that recognition of trade union membership in suppliers' workforces should be made a condition of commercial supply contracts, but does not agree that the State should intervene in commercial arrangements in this way.

We support the introduction of the Corporate Human Rights Benchmark, which recognises businesses who are taking human rights due diligence seriously. (Paragraph 150)

The Government is proud to have supported the development of the Corporate Human Rights Benchmark, a private sector-led initiative that seeks to provide “a comparative snapshot year-on-year of the largest companies on the planet, looking at the policies, processes, and practices they have in place to systematise their human rights approach and how they respond to serious allegations”.

The first rankings of this benchmark were announced in March 2017 after two years of development. The Government sees the competitive nature of such a benchmark as a powerful driver for change.

Access to Justice

Current barriers to accessing justice

Our evidence indicates that the Government's approach is weakest in the area of access to remedy. There is a lack of engagement from the Ministry of Justice. This was particularly clear to us during our meeting with the Minister, whose answers demonstrated a measure of complacency when confronted with some of the issues we have considered. (Paragraph 170)

We do not agree that there has been a lack of engagement from the Ministry of Justice in the development of our National Action Plan on Business and Human Rights. The Ministry of Justice played an active part in the cross-Whitehall discussions, and the consultation exercise, which updated the National Action Plan. The consultation exercise included workshops on both judicial and non-judicial remedy. The Government takes the issue of access to remedy very seriously. As Sir Oliver Heald QC set out in his oral evidence to the Committee, the UK's culture of human rights protection and our long-established legal framework already provide a wide range of remedies, including apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions. There are also ways of preventing harm before it occurs, for example, through the use of injunctions.

We heard substantial evidence on the range of obstacles that obstruct access to remedies for victims of human rights abuses by companies. These include the changes to limit legal aid provision, limits on the recovery of legal costs in these types of case, increases in court and tribunal fees, and the otherwise high costs of civil action, especially if the abuse has occurred overseas. In addition, court procedures have made it increasingly difficult to obtain access to corporate documents. (Paragraph 171)

We look forward to the results of the Government's review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, and will follow closely any changes made to that Act, in order to assess whether they are sufficient to mitigate these concerns. (Paragraph 172)

The Government remains unconvinced that appropriate claims cannot be brought under the current arrangements.

Through the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), the Government reformed the scope of the civil legal aid scheme in England and Wales, but funding has been maintained for the highest priority cases. Where a matter is out of the scope of the civil legal aid scheme, exceptional case funding is available where failure to provide legal aid would breach the applicant's rights under the European Convention on Human Rights (as set out in the Human Rights Act 1998) or European Union law, or where funding is appropriate having regard to the risk of breach.

The Government believes that it is important to control the costs of civil litigation, including claims against multinationals, because they had become unsustainably high. Therefore, LASPO included measures to reduce the costs to the taxpayer of legal aid, and the costs associated with no win no fee conditional fee agreements. It also sought to ensure greater proportionality in costs. The case of *Motto and Others v Trafigura* [2011] EWCA Civ 1150, in which the claimants were represented by Leigh Day; solicitors, and which is cited by Leigh Day in their evidence to the Committee, resulted in a settlement of c. £30m for c. 30,000 claimants (i.e. average damages of £1,000 each). The claimant lawyers claimed costs of over £100m, believed to be the highest in English legal history. Those costs were reduced by the Court of Appeal in 2011.

Help is available to people bringing courts and tribunals proceedings through the Help with Fees scheme, which applies to all Her Majesty's Courts & Tribunals Service's fee charging jurisdictions except the First-tier Tribunal, Immigration and Asylum Chamber (where a separate fee waiver, exemptions and remissions policy applies). Help is targeted towards those in vulnerable households on low incomes who are in receipt of certain State benefits. A person who qualifies for help under the scheme may have the fee remitted either in part or in full.

In January 2017, the Government launched a consultation on extending the support available under the Help with Fees scheme.

On 30 October 2017, the Lord Chancellor announced a post-implementation review of the major legal aid changes made by the LASPO, which will report by summer recess 2018.

We join the Commons Justice and Women and Equalities Committees in calling on the Government to reduce employment tribunal fees. These, it is clear to us, are a barrier

to victims seeking justice when they have suffered human rights abuses, including discrimination, at the hands of their employers and offer impunity for employers abusing human rights. (Paragraph 173)

On 26 July 2017, the Supreme Court handed down judgment in the case of *R (on the application of Unison) v Lord Chancellor* [2017] UKSC 51 quashing the relevant fees order.

The Government took immediate steps to stop charging fees. On 20 October 2017, we announced the launch of the first phase of the Employment Tribunals Refunds scheme and, following its success, the full scheme was rolled out on 15 November. Anyone who paid an Employment Tribunal fee can now apply for a refund.

Access to remedy under civil and criminal law

We recommend that the Government should bring forward legislation to impose a duty on all companies to prevent human rights abuses, as well as an offence of failure to prevent human right abuses for all companies, including parents companies, along the lines of the relevant provision of the Bribery Act 2010. This would require all companies to put place effective human rights due diligence processes (as recommended by the UN Guiding Principles,) both for their subsidiaries and across their whole supply chain. The legislation should enable remedies against the parent company and other companies when abuses do occur, so civil remedies (as well as criminal remedies) must be provided. It should include a defence for companies they had conducted effective human rights due diligence, and the burden of proof should fall on companies to demonstrate this has been done. (Paragraph 193)

The Government has already taken steps to address the human rights implications of UK business activities overseas, including the publication and updating of our National Action Plan on business and human rights.

The Government is committed to the Voluntary Principles on Security and Human Rights which provide guidance on responsible business practices to oil, gas and mining companies, which often operate in high-risk and conflict-affected areas. This guidance helps companies engage with public and private security providers, and with local communities as part of the process of conducting effective risk assessments, in order to ensure their security operations do not lead to human rights abuses or exacerbate conflict.

The Reports on Payments to Governments Regulations 2014 require large undertakings operating in the extractive industries sector to disclose payments they have made to Governments.

The Government has no immediate plans to legislate further in this area.

The current criminal law regime makes prosecuting a company for criminal offences, especially those with operations across the world, very difficult, as the focus is on the identification of the directing mind of one individual, which is highly unlikely in many large companies. We welcome the Ministry of Justice's current consultation on a new 'failure to prevent' offence for economic crimes. We regret that a range of other corporate crimes, for example use of child labour, were excluded from the consultation, and we urge the Ministry of Justice to consider a further consultation with a wider remit. (Paragraph 194)

The Government's call for evidence on corporate economic crime closed on 31 March 2017 and the responses are currently being analysed. An announcement on the way ahead will be made in due course.

However, it is important to be clear that the call for evidence concerned the case for reform of corporate liability for economic crime. It sought evidence and views on the need for reform, and on a number of possible options – including a failure to prevent offence for economic crime.

It was the first of a potential two-part process. Should the Government consider that changes to the law are justified, in light of the results of the Call for Evidence, a consultation on a firm proposal would be a necessary step.

Operation of current criminal law investigations and prosecutions

We have heard that criminal prosecuting authorities sometimes lack the skills and resources to investigate human rights abuses by companies, and that, where there has been some action, such as under the GLA, the penalties are too low to be an effective deterrent. The Committee recommends that the prosecuting authorities be better trained and resourced in investigating breaches of human rights which are criminalised, including for cross-border crimes. Sentencing guidelines for these crimes should be created, to ensure that the penalties are high enough to provide an effective deterrent. (Paragraph 199)

The Crown Prosecution Service (CPS), recognises the need to build investigatory and prosecution capabilities in modern slavery cases; prosecutors provide early investigative advice to the police, assist with pre-charge procedures and work with investigators to build strong cases. National mandatory training on modern slavery for designated prosecutors working in Complex Casework Units (CCUs) has been developed and piloted in September/October, with national roll-out to all CCUs scheduled to take place between December 2017 and 31 March 2018. The CPS also organised an event on 15 September 2017 with the Metropolitan Police Service, to promote the deployment of Joint Investigation Teams to all police forces and CPS complex case units. This will also involve Europol, and Eurojust.

Since the Corporate Manslaughter and Corporate Homicide Act 2007 came into effect, the CPS has brought a charge of corporate manslaughter against a defendant in 25 cases (as of 30 May 2017). Of all concluded cases, 20 have resulted in conviction. The CPS's statutory function (under the Prosecution of Offences Act 1985) is not to 'investigate' crimes, but to institute (and have the conduct of) criminal proceedings.

Maximum penalties for offences are set by Parliament. A court has discretion to sentence according to the seriousness of the offence within the maximum penalty available. Judges in sentencing will take account of the law, precedents and any relevant sentencing guidelines. Sentencing Guidelines are developed by the Sentencing Council, an independent, non-departmental public body which decides on its own priorities and work plan for producing guidelines. There are already overarching sentencing guidelines, applicable in all cases, covering how to determine the seriousness of offences and how to set fine levels. The Council's current work plan does not include development of specific guidelines for gangmaster licencing and other related offences, but it reviews its work plan annually.

Non-judicial access to justice

The UK National Contact Point for the OECD Guidelines has the potential to provide meaningful non-judicial access to justice, alongside the more traditional routes of civil and criminal law. The findings of the NCP also have the potential to feed into judicial cases. In its current form, however, the NCP is largely invisible, and lacks the resources and essential human rights expertise necessary to undertake such a role. (Paragraph 216)

The Government notes the Committee's conclusions. However, it is important to note that the NCP operates in accordance with the OECD Guidelines for Multinational Enterprises, namely to investigate complaints regarding breaches of the Guidelines and to promote the Guidelines to stakeholders.

The standards in the Guidelines are voluntary and cover several areas of business behaviour and policy, including labour rights, taxation, environmental standards and bribery and corruption, as well as human rights. The NCP process is based on the fundamental principle that disputes should be resolved through mediation, with the parties freely entering into an agreement. The NCP cannot sanction entities for non-compliance. However, where circumstances indicate that this has occurred, the NCP is in a position to recommend remedial action to resolve the issue.

The NCP has always been responsive to developments within the Guidelines and has never hesitated to apply them where necessary. After the OECD introduced the provision on Human Rights to the Guidelines in 2011, the NCP examined and accepted a complaint against Formula One World Championship Ltd which included alleged breaches of this section. The NCP was able to provide the parties with an appropriate dispute resolution mechanism that resulted in a mediated outcome.

The UK NCP is highly visible to civil society groups who have a particular interest in the issues covered by the Guidelines and has dealt with 34 cases since the current set of Guidelines was implemented in 2011, more than any other NCP worldwide. The UK NCP has also supported and participated in the development of OECD policies designed to promote better corporate and social responsibility. In particular the UK NCP worked with the OECD to develop their standards on corporate due diligence and practices. This subsequently led to the establishment of the OECD's sector-specific guidance on a range of business disciplines including those related to the financial, extractives, textiles and garments industries.

The Government is fully committed to fulfilling its obligation to maintain a fully functioning NCP and believes it is sufficiently resourced and has sufficient expertise at its disposal to handle effectively complaints under all areas covered by the Guidelines.

We urge the Government to address concerns about the NCP as a matter of urgency. It should create an independent steering board for the NCP, with power to review decisions, to lend it greater expertise. (Paragraph 217)

Since 2007 the work of the NCP has been overseen by an independent steering board, comprised of representatives from business, civil society and trade unions who are experts in the areas covered by the OECD Guidelines. The steering board has powers to review the NCP's handling of complaints and can make recommendations where it finds that

the NCP has not followed its procedures satisfactorily. In some circumstances, this could involve asking the NCP to correct procedural flaws which have had an impact on its conclusions.

In order for the Government to support, and not undermine, decisions of the NCP, we recommend that the Government gives clear guidance to procurement officers that large public sector contracts, export credit, and other financial benefits should not be awarded to companies who have received negative final statements from the NCP and who have not made effective and timely efforts to address any issues raised. (Paragraph 218)

The Government does not believe that the proposed guidance is required.

The Public Contracts Regulations specify the legally permissible grounds for exclusion. Any legally non-binding decisions or recommendations made by the NCP regarding company compliance with the OECD guidelines are non-legally binding and do not constitute a direct ground for exclusion within the Public Contracts Regulations.

Companies are required under the Public Contracts Regulations to self-certify that they are not subject to either the mandatory or discretionary exclusion grounds and the contracting authority is required to seek supporting documentation from the successful preferred bidder prior to contract award.

Where a company has indicated as part of self-certification that it is subject to a ground for exclusion it may provide evidence to the effect that self-cleaning measures it has implemented are sufficient to demonstrate its reliability to perform the contract, despite the existence of a relevant ground for exclusion. Where a contracting authority considers such measures to be insufficient, the contracting authority must exclude the company.

In relation to export credits, any relevant advisory recommendations of the NCP are considered by UK Export Finance (UKEF) in undertaking the human rights aspects of its due diligence. This is undertaken in accordance with HMG OECD obligations (as set out in UKEF's ESHR policy), and any issues would need to be suitably addressed prior to UKEF issuing support.

We recommend that the Government provide extra resources for the NCP, so that it can raise its profile and be seen as a viable mechanism for victims to gain access justice in a non-legal forum. (Paragraph 219)

The Government accepts this recommendation in part. It agrees that the NCP should continue to raise its profile and that of the OECD Guidelines, building on its previous work in this area. It will also continue to ensure that the NCP is fully resourced to deal with complaints effectively, including the funding of external mediation.

The Government should itself publicise adverse decisions by the NCP, for instance via written ministerial statements, to assist in raising the profile of decisions. (Paragraph 220)

The Government accepts this recommendation in part. NCP statements on complaints are currently published on gov.uk; deposited in the House libraries; and communicated to other interested Government departments. It is open to considering how statements can be disseminated to a larger audience, including to Parliament. However, any proposals

to increase awareness of the NCP should also note and consider that the NCP operates independently of Ministers. Ministers have no say in the decisions taken, nor are they consulted. Any direct communication by the Government more generally would have to take account of this independence to avoid the perception of any ministerial influence.

We encourage the NCP to raise its profile by engaging more with parliamentarians, given that MPs in particular often advocate on their constituents' behalf. (Paragraph 221)

The Government accepts this recommendation in part. The NCP is always open to raising awareness of its work to all interested parties, including parliamentarians.

The NCP will consider how engagement with parliamentarians could be integrated into any process to increase general awareness of the NCP, mentioned under recommendation 31.

The implications of Brexit

The effect of Brexit on workers' rights and reporting standards

We heard evidence that EU workers are worried about their status within the UK and are less likely to report issues to the authorities, following the vote to leave the EU. This will leave them more vulnerable to labour exploitation. (Paragraph 228)

Against the backdrop of Brexit, the Government must urgently reassure workers that all victims of human rights abuses will be protected, without reference to nationality or immigration status, and ensure they have clarity regarding their status in the UK. (Paragraph 229)

It is a Government priority to strike an agreement with the EU about the rights of EU citizens living in the UK, and UK citizens living in the EU, as early as we can.

The Government has also made a commitment to tackle illegal working and crack down on worker exploitation across all labour sectors. Retaining a strong and coordinated regime is the best way to protect workers' rights. The Government already prevents labour market exploitation through enforcement by HMRC, the Employment Agency Standards Inspectorate and the Gangmasters and Labour Abuse Authority (GLAA). The role of the Director of Labour Market Enforcement (LME), Sir David Metcalf CBE's is intended to bring together a coherent assessment of the extent and nature of labour market exploitation, harnessing the strength of the three aforementioned enforcement bodies. The Government is keen to support joint initiatives that maximise state enforcement agencies' expertise, while making best use of local knowledge and intelligence.

We want workers who are being exploited by their employers to come forward to report this abuse - EU workers who have concerns about labour exploitation should continue to report these issues to the GLAA. With its new broader remit and stronger powers under the Police and Criminal Evidence Act 1984, the GLAA are able to investigate labour market offences across the economy. Workers in the UK both legally and illegally, who wish to provide intelligence on rogue employers, will continue to be able to do so anonymously, as now, and may take advantage of voluntary return opportunities.

We recommend that EU laws on reporting and procurement, as well as any relating to workers' rights that are not already set out in primary legislation, should be transposed into UK law by means of the Great Repeal Bill. In the longer term, UK laws on reporting and procurement in relation to human rights should continue to set standards at least as high as those set by the EU. (Paragraph 230)

The existing scheme of UK procurement rules, which implement the EU public procurement directives, will be preserved under the European Union (Withdrawal) Bill, with relevant adjustments necessary to ensure it continues to function appropriately. As the Committee's report set out, the European Union (Withdrawal) Bill will also ensure that workers' rights that derive from EU law will continue to be applicable in domestic law. This will give certainty and continuity to employees and employers alike.

We will consider carefully longer-term options for the UK's public procurement rules post-exit. However, we cannot provide further details about the possible outcomes at this stage.

Human rights clauses in trade deals

We welcome the Government's commitment that new bilateral trade agreements will include human rights protections at least equal to those currently included in EU trade agreements. We look forward to seeing this adhered to and will monitor progress with interest. (Paragraph 238)

The UK has a strong history in protecting human rights and promoting our values globally. We will continue to promote our values globally after we leave the EU. The UK is considering all options in the design of future bilateral trade negotiations.

We encourage the Government to use the opportunity of Brexit to set higher human rights standards in future trade agreements, to include workable provisions on enforcement, and to undertake human rights impact assessments before agreeing trade agreements. (Paragraph 239)

We are exploring all options in the design of future bilateral trade and investment agreements, including how we will monitor and enforce these. We are committed to upholding the UK's high standards. We will of course continue to encourage all states to uphold international human rights obligations.

Appendix 2: Letter from Angela Constance MSP to the Committee Chair

Letter from Angela Constance MSP, Cabinet Secretary for Communities, Social Security and Equalities, Scottish Government, to Rt Hon Harriet Harman MP, Chair, Joint Committee on Human Rights

I welcome the Joint Committee's recent inquiry into the important area of human rights and business, and I note that the UK Government has submitted a formal response to the Committee's report, *Human Rights and Business 2017: Promoting responsibility and ensuring accountability*.

The UK Government response makes reference to activity in the devolved administrations and I would like to draw your attention to the development of a national action plan (NAP) to implement the UN Guiding Principles on Business and Human Rights in Scotland, building on the UK NAP. As part of this work, which the Scottish Government is undertaking in partnership with, among others, the Scottish Human Rights Commission and Scottish Enterprise, a national baseline assessment was published in October 2016¹. A period of stakeholder engagement around this evidence base is intended to feed in to the drafting of a NAP in 2018, and we will certainly give close consideration to the Committee's conclusions throughout that process.

*A Nation With Ambition: The Government's Programme for Scotland 2017–18*² sets out the Scottish Government's commitment to respecting, protecting and implementing human rights for everyone in Scotland, and to embedding equality, dignity and respect in everything we do. There is a particular emphasis on economic, social and cultural rights, and much of our wider activity is relevant to several of the Committee's recommendations.

That includes support for fair work and the Living Wage, action to combat human trafficking and exploitation, and a progressive approach to industrial relations. The Sustainable Procurement Duty in section 9 of the Procurement Reform (Scotland) Act 2014 places sustainable and socially responsible purchasing at the heart of the process; an independent review of legal aid will explore how best the system can contribute to improving people's lives now and in the future; and the Scottish Government has committed to commencing the socio-economic duty set out in section 1 of the Equality Act 2010 by the end of 2017.

Promoting social justice and sustainable, inclusive growth are central to the Scottish Government's Purpose, and we are determined to go further. The First Minister has established an Advisory Group on Human Rights Leadership to lead a participatory process to make recommendations, within the context of Brexit, on how Scotland can continue to lead by example in human rights.

Should the Committee like to know more about any of these initiatives, I would be happy to provide more information.

Angela Constance

21 December 2017

1 <http://www.snarights.info/action-areas/better-world/business-and-human-rights>

2 <http://www.gov.scot/Publications/2017/09/8468>