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#ResponsibleGreenwich

Socially Responsible Public Procurement Today

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What we will cover

- About LUPC
- The problem
- Legal issues to consider
- What's happening where in UK public procurement
- What we need now





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MEMBERS' LOGIN



SLAVERY & HUMAN TRAFFICKING

Read our third Modern Slavery and Human Trafficking Statement

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ABOUT US

We are a not-for-profit buying organisation owned by our Members for our Members. Our sole aim is to secure best possible value for our Members in the procurement of goods and services, without causing harm to others. We work collaboratively with other higher education purchasing consortia in the UK to manage more than 100 EU-compliant framework agreements.

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NEWS

Sep 28, 2017
[GUIDANCE PUBLISHED: Protecting Human Rights in The Supply Chain](#)

Jan 16, 2018
[LUPC Director Announces Moving On](#)

Dec 18, 2017
[ALERT: Telephone Lines currently down](#)

Dec 11, 2017
[STATEMENT PUBLISHED: Annual Slavery and Human Trafficking](#)

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Book now to secure your place onto #LUPC & #SUPC's half day training course on the new General Data Protection Regulations (GDPR) taking effect in May this year. To stay one step ahead of the proposed changes, secure your place onto the training course now ow.ly/Pizd30hOk5J



About LUPC

- A non-profit, professional collaborative buying organisation
- Owned by its Members, for its Members
- Aim: To maximize value for Members from the procurement of goods and services, without causing harm to others
- 75 full Members in London's higher education and neighbouring arts, sciences, health and cultural sectors.



About LUPC

- First public buying organisation to publish an annual Statement on Slavery and Human Trafficking
- First UK public sector organization and first in global education sector to be assessed against the new ISO:20400 Sustainable Procurement guidance standard
- Affiliated to Electronics Watch since 2014
- Working in partnership with BHRE Research Group at the University of Greenwich.



Almost **21,000,000 people** are victims of forced labour in the world today.

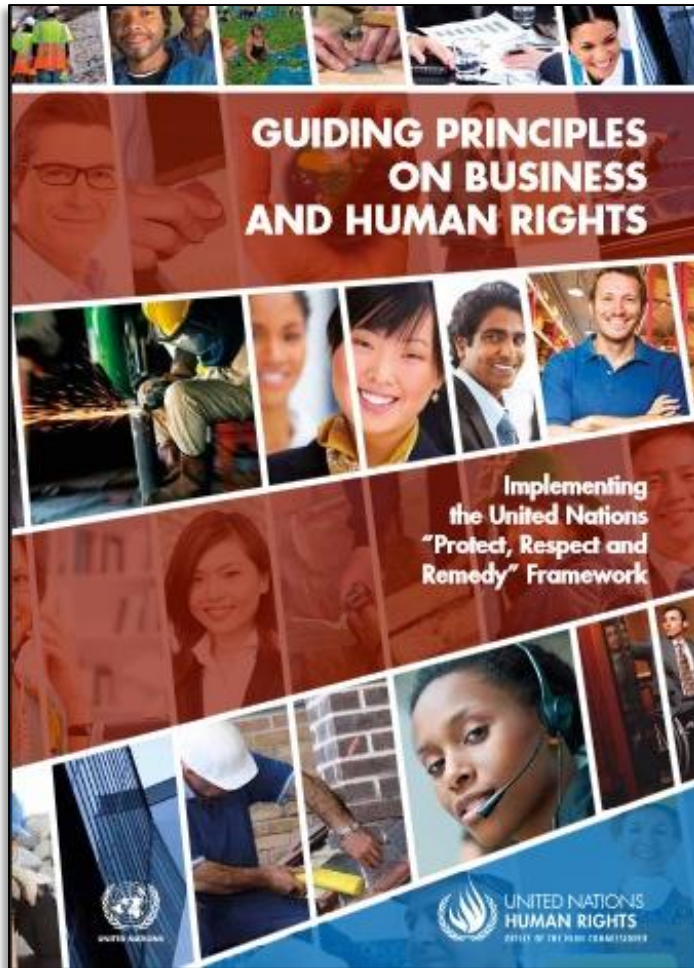
That's **double** the total number of African people who were direct victims of the Atlantic slave trade in the period 1650 to 1900.

Forced labour generates **US\$150,000,000,000** in illegal profits globally.

Domestic work, agriculture, construction, manufacturing and entertainment are the industries of most concern.

Migrant workers and **indigenous people** are the most vulnerable.

National Crime Agency says “tens of thousands” of people are now estimated to be working in slavery **in the UK**.



“States should promote respect for human rights by business enterprises with which they conduct commercial transactions.”

UN Guiding Principles on Business and Human Rights, 2011



The United Kingdom was the **first country** to publish – and update – its Action Plan to implement the UNGPs.

The **Modern Slavery Act (MSA)** came into force in 2015.





The **MSA** requires all “commercial organisations” that turn over more than £36m pa to publish an annual *Slavery and Human Trafficking Statement*, saying what they have done **in the year** to address risks to human rights in their supply chains.





CLYDE & CO

Legal issues in socially
responsible public
procurement

David Hansom, Partner

The law

- Public Contracts Regulations 2015 set out detailed rules around supplier (lead contractor) and key sub contractors selection.
- Mandatory and discretionary grounds of exclusion under regulation 57.
- Very focused on financial issues e.g. bribery, tax evasion, other criminal offences (at corporate and director level)
- Historically limited in terms of social responsibility and supply chain due diligence

The law

- Specific exclusion for convictions under Modern Slavery Act (introduced via amendment regulations in 2015) (regulation 57(7)) but note this requires a conviction
- regulation 57(8)(c) grave misconduct 'where the contracting authority can demonstrate by appropriate means that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable'
- negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.
- whether the bidder has “*violated applicable obligations... in the fields of environmental, social and labour law*”

The law

- Modern Slavery Act 2015
- First of its kind in Europe
- MSA Clause 6
- A slavery and human trafficking statement for a financial year is:
 - a) a statement of the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place:
 - (i) in any of its supply chains, and
 - (ii) in any part of its own business, or
 - b) a statement that the organisation has taken no such steps

UK Govt response to JCHR

From Government's Response to JCHR report, January 2018:

- “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... 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.

UK Govt response to JCHR

From Government's Response to JCHR report, January 2018:

- “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**.
- “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.”

Brexit and the future

- Procurement here to stay post any Brexit
- JCHR acknowledges continuation of EU regime during transition
- MSA only regime of its kind in EU
- Call for bold economic partnership with EU - doesn't focus on people or solidarity e.g. around environment etc.
- A race to the bottom (low tax low regulation)?

Socially Responsible Public Procurement: What's Happening Where in the UK



Higher Education

- Sustainable Procurement Flexible Framework: Many institutions involved, Universities of Manchester and Edinburgh at Level Five
- Electronics Watch: APUC and all its members, LUPC, SUPC plus a further eight UK universities affiliated
- NETpositive Futures Supplier Engagement Tool
- University of Greenwich and University of Nottingham both engaged in research
- APUC *Sustain* supply chain multi-layer assessment portal
- Standardised supply chain code of conduct developed with sector, student community and NGOs



***** Bassetlaw District Council * Belfast City Council * Blackburn with
Darwen Borough Council * Bradford City Council * Breckland District
Council * Brentwood Borough Council * Camden Council * Castle Point
Borough Council * Chelmsford City Council * Colchester Borough Council *
Colchester Borough Council * Cornwall Council * Dartford Borough Council
* Doncaster Borough Council * East Lindsey District Council * East
Northamptonshire District Council * Eastbourne Borough Council * Epping
Forest District Council * Essex County Council * Forest Heath District
Council * Harlow District Council * Hastings Borough Council * Isle of Wight
Council * Leicestershire County Council * Lewes District Council * Milton
Keynes Council * Nottingham City Council * Nottinghamshire County
Council * Peterborough City Council * Sandwell Borough Council * South
Gloucestershire Council * St Edmundsbury Borough Council * Suffolk
Coastal District Council * Sutton Council * Tamworth Borough Council *
Telford and Wrekin Borough Council * Tendring District Council * Torbay
Council * Uttlesford District Council * Warrington Borough Council *
Waveney District Council * Wolverhampton City Council * Worcestershire
County Council * Wycombe District Council *****

Local Government

- 44 local authorities have published some sort of statement, with more to follow.
- YPO and ESPO have their own MSA Statements.
- NEPO doesn't, but will eliminate from competition any bidder that doesn't comply with the Act.
- Local Government Association leading action for the sector.



Tackling modern slavery

A council guide

Guidance

- Includes steps councils can take in procurement
- **Free to download, produced in collaboration with the Anti-Slavery Commissioner**



MAYOR OF LONDON

**THE GLA GROUP
RESPONSIBLE
PROCUREMENT
POLICY**

- Mayor of London's Responsible Procurement Policy governing a spend of £11bn pa
- **“Has the potential to create a massive ripple effect throughout all of London's suppliers that can fundamentally change the way that products and services are designed, provided and consumed.”**




Working in partnership to protect vulnerable and exploited workers




 I am a worker...



 I supply workers...



 I use workers...



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Healthcare



- Labour Standards Assurance System (LSAS) is now reaching maturity.
- Designed to encourage suppliers in higher-risk categories to conduct human rights due diligence.
- Some criticism of method and resourcing, but some excellent experience gained.
- NHS Supply Chain contract with DHL expires 30 September 2018.



Central Government

From Government's Response to JCHR report, January 2018:

- “**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.”

This development is very **welcome!**



Central Government

The pilot involves a fairly large questionnaire. We suggest their next steps should be to:

- **Prioritise** their risk assessment, i.e. choose which suppliers they are going to follow up with and establish a plan of engagement;
- Design a full **due diligence strategy and processes** (gathering information from suppliers is unlikely to be enough); and
- **Collaborate** with external organisations to do this.



What we need now

- Together, we spend upwards of **£240bn a year** on goods, services and works for use in public service.
- We know we have a **legal obligation** to promote respect for human rights in public supply chains.
- Our country has shown how **we can lead the world** in this.
- We now look to the Government for **leadership and support** – know-how, expertise, training, tools
- Not just how to exclude bidders, but how we can work constructively, **with** our suppliers to help manage the risks.





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Protecting human rights in the supply chain



A guide for public
procurement practitioners

- Free to download from the LUPC or CIPS websites
- **Also available as three free eLearning topics from today...**





**PROTECTING HUMAN RIGHTS IN
THE SUPPLY CHAIN:
A GUIDE FOR PUBLIC
PROCUREMENT PRACTITIONERS**

1. INTRODUCTION

PREPARING A SLAVERY AND HUMAN TRAFFICKING STATEMENT UNDER THE MODERN SLAVERY ACT





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390

Partners

2000

Legal
professionals

3600

Total staff

48

Offices and associated
offices in 21 countries