**Survey on the implementation of the Guiding Principles on Business and Human Rights:
The role of States as economic actors**

The present survey focus on the roles and responsibilities of States as economic actors, including with regard to business enterprises owned/operated/managed by the State, business enterprises in which the State is a majority shareholder or exercises substantial control, and financial institutions such as sovereign wealth or pension funds, development banks, export credit agencies and official investment and insurance guarantee agencies.

The survey relates to Guiding Principle 4 of the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in 2011 (Resolution 17/4) and have become the authoritative global reference point for preventing and addressing adverse impacts on human rights arising from business-related activity.

Guiding Principle 4 clarifies that as part of their duty to prevent and address adverse human rights impacts arising from business activities, “*States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.*” The commentary to that principle clarifies further that business enterprises owned or controlled by the State may in certain circumstances involve direct international human rights law obligations for the State in question, and that in all circumstances these enterprises are subject to the corporate responsibility to respect human rights. Key elements of this responsibility include a policy commitment to respect human rights throughout operations, human rights due diligence and addressing adverse impacts that may occur.

The State’s own human rights obligations are also directly implicated when the State contracts with business enterprises that provide services that may impact upon the enjoyment on human rights (e.g. privatized service delivery providers) or act as a purchaser of goods, through public procurement activities (see Guiding Principles 5 and 6). The present survey, however, focuses specifically on the requirements set out in Guiding Principle 4.

The survey follows on from previous surveys on implementation of the Guiding Principles conducted by the Working Group.[[1]](#footnote-1) The surveys aim to identifying progress and good practices in the implementation of the Guiding Principles.

**Questionnaire**

If the Government’s response is “yes” to any of the questions below, the Working Group would be grateful if further details, references or links to the relevant policy, legislation, regulation or documents could be appended, if possible. **Please send the response by 1 September 2015** to wg-business@ohchr.org.
Please use the following subject line in the email response: “[Country name] SURVEY 2015 Forum”. The Working Group will post responses on the web site of the 2015 Forum on Business and Human Rights[[2]](#footnote-2) unless respondents indicate that their submission should be treated confidentially.

**A. General update**

*(This information is sought to update findings from the Working Group’s 2014 survey.[[3]](#footnote-3) If the Government responded to this question in 2014 and there are no updates, this part can be skipped)*

1. Please indicate any specific steps taken by the State to implement the Guiding Principles on Business and Human Rights since they were endorsed by the Human Rights Council in June 2011.

Yes. The Guiding Principles form the basis of the UK Action Plan (<https://www.gov.uk/government/publications/bhr-action-plan>), which is structured around the three pillars of the State duty to protect human rights; the corporate responsibility to respect human rights; and access to remedy.

The UK Action Plan also includes the negotiation and agreement of the OECD 2012 Common Approaches, including a requirement for Export Credit Agencies (ECAs) to take into account not only potential environmental impacts but also social impacts, which is defined to include “relevant adverse project-related human rights impacts. “The OECD 2012 Common Approaches” also require ECAs to “consider any statements or reports made publicly available by their National Contact Points (NCPs) at the conclusion of a specific instance procedure under the OECD Guidelines for Multinational Enterprises.” UKEF, which is the UK’s Export Credit Agency applies the OECD 2012 Common Approaches.

1. Do these efforts include a plan to develop or update a State national action plan on Business and Human Rights (or another Government-lead plan to promote responsible business practice), and does such plan refer to the UN Guiding Principles and the guidance developed by the Working Group?[[4]](#footnote-4) If yes, please indicate:

Yes. The UK Action Plan “*Good Business: Implementing the UN Guiding Principles on Business and Human Rights”* was published in September 2013 and is being reviewed this year.

* 1. The Government department(s) taking the lead and involved in developing such plan and coordinating its implementation?

The Foreign & Commonwealth Office (FCO) and Business, Innovation and Skills Department (BIS) jointly lead on the implementation of the UK National Action Plan in collaboration with a Steering Group made up of key Government Departments.

* 1. Whether different stakeholders, including business associations and civil society organizations, have been involved in developing the plan, and whether there is an institutional platform for such engagement and participation?

The UK Action Plan was developed through close consultations with business and Civil Society organisations. Work is currently underway on fulfilling the commitment given to review the UK National Action Plan by end of 2015. As with the development of the National Action Plan this exercise will be in close consultation with business and civil society. In line with that approach, we held an event on 24th March this year to engage with stakeholders to mark the beginning of the consultation process. This event was attended by 80 people from business, civil society, academia and government. This event was followed up with another series of in-depth workshops which took place 29 June – 3 July with participation from a wide range of stakeholders.

**B. Business enterprises owned or controlled by the State**

1. Does the Government have policies and/or regulations and/or guidance in place that address the need for enterprises that are owned or controlled by the State to implement respect for human rights throughout their operations? If yes, do these include:

Yes, to the extent that they have such obligations by reason of their status for example as a listed company. There are no additional requirements faced by state owned enterprises, because the state seeks to act as an arms-length shareholder in these entities.

1. Requirements or expectations for State-owned enterprises to undertake human rights due diligence?

Contracting authorities may on a case by case basis specify due diligence requirements in any of the areas described above where they relate to the subject matter or performance of the contract.

Additionally contracting authorities and economic operators are required to comply with the requirements of the Public Sector Equality Duty (“the Duty”) which encompasses all of the characteristics (such as race, disability and gender) protected under the Equality Act 2010.

The Duty requires public bodies to have due regard to the need to:

* Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
* Advance equality of opportunity between people from different groups; and
* Foster good relations between people from different groups.

The applicable legislation (The Public Contracts Regulations 2006 (Regulation 23) also provides that a contracting authority may treat as ineligible [to bid] or decide not to select an economic operator on the grounds that the economic operator has committed an act of grave misconduct in the course of its business or profession.

1. Provisions for human rights due diligence relating to activities in other countries/abroad?

The policy document *Good Business: Implementing the UN Guiding Principles on Business and Human Rights* is the UK national Action Plan for Business and Human Rights <https://www.gov.uk/government/publications/bhr-action-plan>

UK Government policies do not reference specific human rights, rather they invite companies to consider the wider impacts of their operations. Business-led initiatives focus on specific rights, notably labour rights and the avoidance of exploitative working practices. The Government’s expectation is that British companies will build respect for human rights into all aspects of their operations and will act accordingly.

We have instructed our embassies on good practice on Business and Human Rights, including producing a Government toolkit on How to do Business and Human Rights, organised a network conference for all staff across the diplomatic network, including our overseas missions, and training for all those FCO and UKTI staff who require human rights knowledge and skills to do their jobs more effectively.

We have instructed our embassies UK companies to discuss the Voluntary Principles and provide support on managing human rights risk.

The government provides assistance and advice to UK companies exporting and investing overseas through UK Trade and Investment (UKTI). Advisers from UKTI will make companies aware of Human Rights risks in specific markets. The Overseas Business Risk service is an online facility that provides an analysis of a range of risk factors in selected countries, including Human Rights.

Government policies do not reference specific human rights, rather they invite companies to consider the wider impacts of their operations. Business-led initiatives focus on specific rights, notably labour rights and the avoidance of exploitative working practices.

1. Requirements to report on human rights risks and/or impacts, and if so on what issues?

Yes. Section 414 of the Companies Act 2006 sets out the requirement for quoted companies to report on human rights as part of their duty to provide a strategic (non-financial) report on an annual basis where it is necessary for an understanding of the business (section 414C (7)(iii) refers –

<http://www.legislation.gov.uk/uksi/2013/1970/pdfs/uksi_20131970_en.pdf>

This requirement has been strengthened further with the UK having played a leading role in negotiating tough, but practical, EU-wide human rights disclosure requirements which will take effect from 2016 across all EU Member States. For large listed companies, we will have some of the strongest human rights disclosure requirements in the world.

The 2016 regulations will require Public Interest Entities with over 500 employees to report “to the extent necessary for an understanding of the undertaking’s development, performance, position and impact” on the undertaking’s respect for human rights. Public Interest Entities include listed companies, credit and insurance undertakings and others designated as such by Member States using criteria such as the number of employees, economic importance, nature of the business, etc.

The report will include a brief description of the business model, a description of the human rights policy pursued (including, where they exist, any due diligence processes implemented), results of the policy, principal risks related to these matters linked to the business’ operations (including where relevant and proportionate to its business relationships, products and services which are likely to cause adverse impacts in those areas and how the business manages those risks) and non-financial KPIs relevant to the particular business. These requirements are aligned to the UN Guiding Principles on Business and Human Rights.

Existing human rights disclosure requirements apply to listed companies with a limited exemption for small businesses as described under section 414b of the Companies Act. The enhanced requirements due to come in to force in 2016 will apply to Public Interest Entities as described above.

1. Does the Government have any policies and/or regulations and/or guidance with regard to joint ventures involving the Government (e.g. in the extractive sector)? If yes, do these also apply to joint venture partners?

Guidance on joint ventures between the public and private sector has been produced by the Treasury -  <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/225321/06_joint_venture_guidance.pdf>

More broadly, the Treasury has also produced guidance on infrastructure procurement - <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/329052/iuk_procurement_routemap_guide_to_improving_delivery_capability_280113.pdf>

1. Are publicly owned funds (e.g. pension or sovereign wealth funds) required or expected to include human rights risks in fund management criteria?

The UK Government has no publicly owned sovereign wealth funds, but the Shareholder Executive in Her Majesty's Treasury (HM Treasury), is responsible for publicly owned corporations (such as the Royal Mint). Gov.UK<https://www.gov.uk/government/organisations/the-shareholder-executive>.

1. Do publicly owned or controlled financial institutions (e.g. export credit agencies, official investment insurance agencies or development finance institutions) have safeguard policies that refer to human rights? If yes, do they have human rights due diligence requirements for clients that benefit from financial or advisory support?

Yes. UK Export Finance (UKEF) applies the OECD 2012 Common Approaches and undertakes environmental and social, including human rights, due diligence reviews, as set out in the OECD 2012 Common Approaches.

UKEF applies the OECD 2012 Common Approaches which requires for all cases classified as A that UKEF makes publicly available environmental and social, including human rights where relevant, impact information. As set out in the OECD 2012 Common Approaches UKEF requires the buyer and/or project sponsor to make this information publicly available and UKEF provides a category A web notice with a link to the buyer and/or project sponsor website where the environmental and social impact information can be found.

<http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/ECG%282012%295&doclanguage=en> and related requirements are aligned to the UN Guiding Principles on Business and Human Rights.

1. Please indicate any other practices or lessons learned that the Government would like to share in relation to the human rights responsibilities of business enterprises owned or controlled by the State.

All public procurement must be carried out in accordance with the principles of the Treaty of Rome and the requirements of the EU Public Procurement Directives.

This legal framework requires contacting authorities to comply with the principles of non-discrimination, equal treatment, transparency, procedural fairness and proportionality.

Economic operators are also required to comply with all applicable law in the provision of their goods and services, which in the case of the UK, includes the requirement to comply with The Human Rights Act 1998.

Additionally, the decision making process for public procurement of services (but not goods or framework agreements) must include social considerations.

The Public Services (Social Value) Act 2012

<http://www.legislation.gov.uk/ukpga/2012/3/enacted> requires that public authorities should have a regard to the economic, social and environmental well-being in connection with public services contracts.

Further information can be found in Cabinet Office guidance: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/79273/Public_Services_Social_Value_Act_2012_PPN.pdf>

1. [www.ohchr.org/EN/Issues/Business/Pages/ImplementationGP.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/ImplementationGP.aspx). [↑](#footnote-ref-1)
2. [www.ohchr.org/2015ForumBHR](http://www.ohchr.org/2015ForumBHR). [↑](#footnote-ref-2)
3. Available at: <http://www.ohchr.org/EN/Issues/Business/Pages/ImplementationGP.aspx> [↑](#footnote-ref-3)
4. The Working Group’s Guidance on National Action Plans on Business and Human Rights is available at:

 <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>. This page also includes a list

 of countries that have developed national action plans or indicated plans to do so. [↑](#footnote-ref-4)