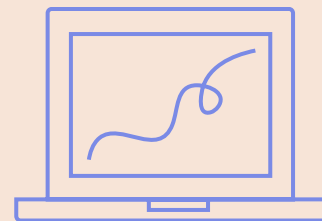


Policy brief:

Effectiveness of public procurement measures in addressing modern slavery



Authors: Dr Sofia Gonzalez de Aguinaga,
Owain Johnstone, Olivia Hesketh

Modern Slavery PEC Policy Brief 2022-2

This Modern Slavery PEC Policy Brief is the third in a series of Policy Briefs¹ that assess the evidence base on the effectiveness of different regulatory interventions to address modern slavery in global supply chains, a key research priority for the Modern Slavery PEC, as set out in [our Strategy](#). This Brief assesses the evidence base on the effectiveness of relevant public procurement laws, policies and practices (collectively 'public procurement measures') at addressing modern slavery.²

There is ongoing interest from policymakers, businesses and civil society in the potential for public procurement – the process by which the public sector purchases goods, services and works from the private sector – to be used as a lever to address modern slavery in supply chains.³ Action on public procurement was recognised as one of four '[principles for tackling modern slavery in supply chains](#)', launched in 2018 by the 'Five Eyes' group (UK, US, Canada, Australia and New Zealand).

This Policy Brief focuses on public procurement measures in countries similar to the UK where governments have made a stated commitment to addressing forced labour in supply chains. These include: the Five Eyes group, the G7 (Canada, France, Germany, Italy, Japan, UK, US) who issued a [joint statement](#) on this subject in October 2021, and relevant European and Scandinavian countries where there is emerging good practice.

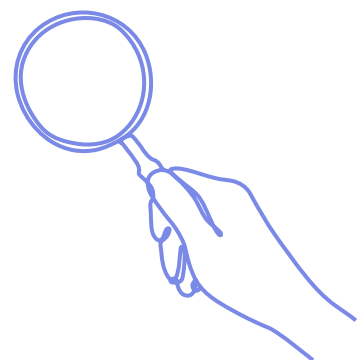
1. The first Policy Brief in the series focused on the [effectiveness of forced labour import bans](#) and the second considered the effectiveness of [mandatory human rights and environmental due diligence legislation](#).

2. Dr Sofia Gonzalez de Aguinaga, from the Bingham Centre for the Rule of Law, also undertook the separate evidence review that underpins this Policy Brief available at <https://modernslaverypec.org/resources/public-procurement>. The Bingham Centre is part of the British Institute of International and Comparative Law (BIICL), which is the independent research organisation that hosts the Modern Slavery PEC. The Bingham Centre leads a work strand for the Modern Slavery PEC focused on supply chains, business models and worker voice.

3. See for example ICAT's (2021) "[Issue Brief](#)" on the role of public procurement in preventing human trafficking

Key findings

1. There is evidence of countries introducing a range of provisions into their public procurement laws and policies to address modern slavery, as well as producing guidelines, training, toolkits and resources. The most common legal and policy measures are exclusion criteria, selection criteria, award criteria, contract performance clauses and termination of contracts. Common wider practices include due diligence (risk identification and assessment) and collaboration. However, there is limited research into how these measures are being implemented in practice. Most countries focus these measures on high-risk sectors and on prevention of modern slavery rather than remediation. From the countries reviewed, all Five Eyes countries have implemented measures, whilst many G7 countries have not.
2. There is limited evidence that has directly explored the effectiveness of specific public procurement measures at addressing modern slavery risk, though there are some case studies demonstrating public procurement measures have positively influenced supplier behaviour and contributed to reduced modern slavery risk. Several factors are likely to influence effectiveness: legal certainty, resources and capabilities, and collaboration influence how well public sector bodies implement the measures; contract management and market knowledge influence effectiveness of the measures at changing supplier behaviour; and national regulatory and sectoral systems, legislative design, and monitoring practices influence the effectiveness of the measures at addressing modern slavery. The effectiveness of modern slavery provisions can be increased if applied across different stages of the procurement cycle.
3. There is limited evidence on the interactions between public procurement measures and other instruments that seek to address modern slavery in global supply chains, partly because many of these other instruments are relatively new. In some cases, non-compliance with a related instrument may exclude companies from bidding for public contracts. Public procurement measures that require companies to undertake or to demonstrate types of due diligence are likely to complement related measures that have similar overall objectives.
4. There is very limited evidence of any wider consequences of using public procurement as a lever to address modern slavery in supply chains. Possible unintended consequences include unequal or unfair impacts on SMEs and developing countries.



Methodology

This Policy Brief is based on an assessment of existing academic literature and other material produced by NGOs, governments and international organisations. This evidence was collected through desk-based research, factoring in the insights of consulted academics and public procurement practitioners.

We considered the following five questions, rating the quality of the evidence base against questions 1 - 4, according to the criteria in Box 1 (below):

1. What evidence is there on public procurement measures to address modern slavery risks and their implementation?
2. What does the evidence show about the effectiveness of different public procurement measures at addressing the risk of modern slavery?
3. What does the evidence show about the connections between public procurement measures and wider obligations on businesses to address modern slavery risk in their supply chains? For example, transparency regimes and mandatory human rights due diligence.
4. What does the evidence show about any potential wider consequences of using public procurement as a lever to address modern slavery in supply chains?
5. What are the priorities for future research in this area?

Box 1: Evidence quality assessment - description of ratings

Green

There is a well-established body of evidence on this issue; the overall landscape and evidence gaps are well understood; evidence is grounded in rigorous and peer reviewed research

Amber

There are some rigorous and peer reviewed research studies on this issue; evidence base is growing but there remain gaps in understanding

Red

There are no or very few rigorous research studies on this issue; evidence base is anecdotal; data sources are very limited

1. What evidence is there on public procurement measures to address⁴ modern slavery risks⁵ and their implementation?

Evidence rating: Public procurement measures: **Green**

Implementation: **Amber**

Key finding: There is evidence of countries introducing a range of provisions into their public procurement laws and policies to address modern slavery, as well as producing guidelines, training, toolkits and resources. The most common legal and policy measures are exclusion criteria, selection criteria, award criteria, contract performance clauses and termination of contracts. Common wider practices include due diligence (risk identification and assessment) and collaboration. However, there is limited research into how these measures are being implemented in practice. Most countries focus these measures on high-risk sectors and on prevention of modern slavery rather than remediation. From the countries reviewed, all Five Eyes countries have implemented measures whilst many G7 countries have not.

Cross-cutting themes in existing laws, policies and practices

- **High-risk sectors.** Several countries have identified high-risk sectors to which specific laws, policies and practices apply, with ICT, apparel & textiles, health supplies and construction being among the most common (See Table 1 in Annex A).
- **Focus on prevention.** Most countries are focused on prevention of modern slavery rather than remediation, with some exceptions.⁶ A study of twenty jurisdictions including Australia, Ireland, the Netherlands, and Norway found that none provided access to remedy nor did they have dedicated remedial mechanisms for workers in government supply chains.⁷
- **Lack of transparency.** Most countries do not have modern slavery transparency laws, policies or practices that apply to the public sector. At the legislative level only Australia has introduced mandatory transparency measures for public procurement authorities through the Modern Slavery Act 2018.⁸

4. For the purposes of this policy brief, we define 'address' to mean 'identify, prevent, mitigate or remediate' modern slavery risks.

5. Key word searches included combinations of 'Modern Slavery', 'Forced Labour', 'Human Trafficking' and 'Public Procurement', 'Government Procurement'. Evidence in this context that referred to labour rights/standards, labour exploitation, child labour and the ILO core conventions was also included for review.

6. In the US, whilst there are remedy provisions in the Federal Acquisition Regulations (FAR) regarding overtime pay and in the 1936 Walsh-Healey Act regarding child labour, they are limited in scope as they only apply for employees within the US. (Methven O'Brien, C., Vander Meulen, N., & Mehra, A. (2016). Public Procurement and Human Rights: A Survey of Twenty Jurisdictions. 1-104).

7. Methven O'Brien, C., Vander Meulen, N., & Mehra, A. (2016). Public Procurement and Human Rights: A Survey of Twenty Jurisdictions. 1-104

8. In the UK a new [Modern Slavery Bill](#) is [expected to extend](#) Section 54 of the Modern Slavery Act 2015 to public sector organisations with an annual budget of at least £36m.

The most common legal and policy measures implemented across countries encompass the whole procurement cycle⁹ and are discussed in detail below.

Exclusion criteria

Exclusion criteria, which can be mandatory or discretionary, are used to prevent suppliers that have committed any violations of applicable social or labour law, or collective agreements, from bidding for a public contract.¹⁰ In the UK, modern slavery offences are listed as mandatory exclusion criteria under s57(1) of the Public Contracts Regulations 2015. Other jurisdictions have similar criteria in place (see Table 1 at Annex A for full details), such as the EU, where Directive 2014/24/EU on public procurement allows for mandatory exclusion for child labour and human trafficking and discretionary exclusion for violations of the ILO core conventions. Similarly, the US and Western Australia have established *debarment*¹¹ regimes alongside exclusion criteria.¹² For instance, in the US, the Federal Acquisition Regulation (FAR) requires public buyers to exclude suppliers that do not demonstrate sufficient integrity and ethics¹³ and allows for debarment when officers find human trafficking violations.¹⁴

However, there is limited evidence on how exclusion criteria and debarment regimes have been applied in practice. Research by the European Commission has found that, in general, the use of exclusion grounds as an available social provision under the EU Directive has so far been underexploited.¹⁵ Factors that influence this are discussed under Question 2.

Selection and award criteria

Selection criteria allow a public buyer to stipulate mandatory minimum requirements that must be met for a supplier to be eligible for a procurement.¹⁶ In the UK, modern slavery risk management requirements such as certifications or standards can be included as technical specifications.¹⁷

9. Typically, the procurement cycle is divided in Pre-tender, Tender and Post-tender. The pre-tender phase refers to activities involved in the tendering process prior to award of a project, for example market research and defining the requirements and award criteria. The tender phase is where tender requirements are presented to the market and includes setting selection/qualification and award criteria and contract performance clauses. The post-tender phase includes monitoring contracts (OECD., 2020). Integrating Responsible Business Conduct in Public Procurement. https://www.oecd-ilibrary.org/governance/integrating-responsible-business-conduct-in-public-procurement_02682b01-en

10. European Commission. (2021). Buying Social - A guide to taking account of social considerations in public procurement (2nd edition)

11. Debarments are a form of exclusion that include removing a supplier for a specific procurement process, for a period of time (The World Bank, & Inter-American Development Bank. (2019). A Global View of Debarment: Understanding Exclusion Systems Around the World. <https://doi.org/10.37703/0033-2909.126.1.78>), or from "preferred supplier" or equivalent lists (OSCE., 2018). Model Guidelines on government measures to prevent trafficking for labour exploitation in supply chains).

12. In the UK, Regulation 37 of the [Procurement Bill](#) aims to create a 'debarment register' accessible to all public sector organisations as an additional exclusion mechanism to prevent modern slavery in public procurement.

13. Mbah, M., Cahill, D., & Ceri, E. (2021). Tackling Human Trafficking in Governments Supply Chains : Legal Certainty & Effectiveness Issues Under the Australian Commonwealth Procurement Rules. Federal Law Review (In Press).

14. [Federal Acquisitions Regulations Subpart 22.1 Combatting Trafficking in Persons. Section 22.1704 Violations and remedies.](#) See also OSCE. (2018). Model Guidelines on government measures to prevent trafficking for labour exploitation in supply chains.

15. European Commission, Executive Agency for Small and Medium-sized Enterprises, Tepper, P., McLennan, A., Hirt, R., et al., Making socially responsible public procurement work: 71 good practice cases, Publications Office, 2020.

16. The Danish institute for Human Rights. (2020). Driving Change Through Public Procurement.

17. See [Tackling modern slavery in government supply chains \(2019\)](#)

Selection criteria can focus on disclosure of specific risks (such as migrant worker conditions and recruitment fee policies¹⁸) or have a more general scope such as working hours and wages.¹⁹ They may require compliance with international standards such as the ILO Core Labour Conventions²⁰ or membership of an ethical trade organisation.²¹

Award criteria are not mandatory requirements for suppliers to meet but are taken into account by the buyer when deciding which tender to accept.²² In the UK, Public Procurement Note 06/20 establishes that a minimum of 10% weighting should be given to social value criteria which include modern slavery considerations.²³ Depending on the weighting, selection criteria can have a significant influence on the award of a contract.

For instance, public authorities in Bonn, Germany included compliance with ILO core labour standards as award criteria (weighted at 15%) for a uniforms tender in 2016. In a second call for tender in 2018, the weighting was increased to 30%, allowing bidders to win the contract even if they were not the cheapest offer.²⁴

Award criteria can cover similar ground to selection criteria, e.g. referencing compliance with ILO Core Labour Conventions²⁵ or rewarding suppliers for certain kinds of transparency²⁶ or for paying a living wage.²⁷ The weighting of award criteria and the levels of the supply chain that they apply to may vary. In some cases, award criteria have been implemented beyond Tier 1 suppliers.²⁸

18. See example of Region Stockholm in The Danish institute for Human Rights. (2020). Driving Change Through Public Procurement (Issue March).

19. See example of the City of Madison in The Danish institute for Human Rights. (2020). Driving Change Through Public Procurement.

20. See case of the BMZ Federal Ministry of Economic Cooperation and Development of Germany in European Commission Executive Agency for Small and Medium-sized Enterprises, Tepper, P., McLennan, A., Hirt, R., et al. (2020). Making socially responsible public procurement work : 71 good practice cases. (Issue May). <https://data.europa.eu/doi/10.2826/844552>

21. See case of the Czech Ministry of Labour and Social Affairs in European Commission Executive Agency for Small and Medium-sized Enterprises, Tepper, P., McLennan, A., Hirt, R., et al. (2020). Making socially responsible public procurement work : 71 good practice cases. (Issue May). <https://data.europa.eu/doi/10.2826/844552>; and In European Commission. (2021). Buying Social - A guide to taking account of social considerations in public procurement (2nd edition).

22. OECD. (2020). Integrating Responsible Business Conduct in Public Procurement. https://www.oecd-ilibrary.org/governance/integrating-responsible-business-conduct-in-public-procurement_02682b01-en.

23. See model award criterion 6.3 in [Social Value Model quick reference table](#).

24. European Commission Executive Agency for Small and Medium-sized Enterprises, Tepper, P., McLennan, A., Hirt, R., et al. (2020). Making socially responsible public procurement work : 71 good practice cases. (Issue May). <https://data.europa.eu/doi/10.2826/844552>

25. See example of the BMZ Federal Ministry for Economic Cooperation and Development of Germany in European Commission Executive Agency for Small and Medium-sized Enterprises, Tepper, P., McLennan, A., Hirt, R., et al. (2020). Making socially responsible public procurement work : 71 good practice cases. (Issue May). <https://data.europa.eu/doi/10.2826/844552>

26. In Sweden, the Region Stockholm has applied a methodology of reducing the price quoted by a supplier up to 30% to tenders in the ITC, surgical instruments and rubber gloves if they meet all the award criteria which includes disclosure of supply chain and human rights risk assessments conducted. The Danish institute for Human Rights (2020). Driving Change Through Public Procurement (Issue March).

27. In Finland, the national central purchasing body gives points to suppliers that pay a living wage and that limit total working hours, including overtime, to no more than 48 hours per week on average. See OECD (2020), Integrating Responsible Business Conduct in Public Procurement, https://www.oecd-ilibrary.org/governance/integrating-responsible-business-conduct-in-public-procurement_02682b01-en.

28. See the case of Germany in the ICT industry In European Commission Executive Agency for Small and Medium-sized Enterprises, Tepper, P., McLennan, A., Hirt, R., et al. (2020). Making socially responsible public procurement work: 71 good practice cases. (Issue May). <https://data.europa.eu/doi/10.2826/844552>

Contract performance clauses & contract termination

Contract performance clauses are conditions included in procurement contracts that require certain steps to be taken by the supplier (e.g. in relation to labour standards) for the duration of the contract.²⁹ In the UK, for example, Leeds City Council³⁰ and Essex County Council include modern slavery clauses in certain procurement contracts.³¹ In some countries, mandatory labour clauses are used widely (such as in Germany³²) or only in connection to specific supply chains (such as Swedish procurement of surgical instruments³³ and coffee from Brazil³⁴). In some cases, contract clauses apply beyond Tier 1 suppliers (such as in Copenhagen).³⁵

A breach in these clauses can lead to financial penalties³⁶ or termination of the contract³⁷ and debarment³⁸. In the UK, public authorities can insert termination clauses for modern slavery offences in high-risk contracts but should only terminate a contract as a last resort.³⁹ In the US, the Federal Acquisition Regulation (FAR) allows for public authorities to terminate a contract if they find that an entity or its subcontractors is engaged in forced labour or human trafficking.⁴⁰ These clauses can be linked to suspension from bidding on future contracts (as with the Norwegian Skien model⁴¹).

However, there is a lack of evidence on the use of these contract provisions in practice.⁴²

29. OECD. (2020). Integrating Responsible Business Conduct in Public Procurement. https://www.oecd-ilibrary.org/governance/integrating-responsible-business-conduct-in-public-procurement_02682b01-en

30. Jaehrling, K., Johnson, M., Larsen, T. P., Refslund, B., & Grimshaw, D. (2018). Tackling Precarious Work in Public Supply Chains: A Comparison of Local Government Procurement Policies in Denmark, Germany and the UK. *Work, Employment and Society*, 32(3), 546–563. <https://doi.org/10.1177/0950017018758216>

31. Martin-Ortega, O., Gorna, A., Corradi, L., & Dehbi, F. (2020). UK Modern Slavery Act Transparency in Supply Chains: Reporting by Local Authorities (Issue Research Series Report No. 4).

32. Jaehrling, K., Johnson, M., Larsen, T. P., Refslund, B., & Grimshaw, D. (2018). Tackling Precarious Work in Public Supply Chains: A Comparison of Local Government Procurement Policies in Denmark, Germany and the UK. *Work, Employment and Society*, 32(3), 546–563. <https://doi.org/10.1177/0950017018758216>

33. See Swedwatch, & BMA. (2015). Healthier Procurement. <https://swedwatch.org/publication/healthier-procurement/>

34. See Swedwatch. (2016). Agents for change. How public procurers can influence labour conditions in global supply chains. Case studies from Brazil, Pakistan and Thailand.

35. See Copenhagen's chain liability clauses in Jaehrling, K., Johnson, M., Larsen, T. P., Refslund, B., & Grimshaw, D. (2018). Tackling Precarious Work in Public Supply Chains: A Comparison of Local Government Procurement Policies in Denmark, Germany and the UK. *Work, Employment and Society*, 32(3), 546–563. <https://doi.org/10.1177/0950017018758216> and European Commission Executive Agency for Small and Medium-sized Enterprises, Tepper, P., McLennan, A., Hirt, R., et al. (2020). Making socially responsible public procurement work : 71 good practice cases. (Issue May). <https://data.europa.eu/doi/10.2826/844552>

36. For example, SKI in Sweden and the Skien Model in Norway (See Table 1 in Annex A for details).

37. OECD. (2020). Integrating Responsible Business Conduct in Public Procurement. https://www.oecd-ilibrary.org/governance/integrating-responsible-business-conduct-in-public-procurement_02682b01-en

38. See footnote [11] for definition of debarment. *Federal Acquisitions Regulations paragraph (e) of the clause 52.222-50, Combating Trafficking in Persons*.

39. See [Tackling modern slavery in government supply chains \(2019\)](#)

40. Aronowitz, A. A. (2019). Regulating business involvement in labor exploitation and human trafficking. *Journal of Labor and Society*, 22(1), 145–164. <https://doi.org/10.1111/wusa.12372>

41. European Commission Executive Agency for Small and Medium-sized Enterprises, Tepper, P., McLennan, A., Hirt, R., et al. (2020). Making socially responsible public procurement work : 71 good practice cases. (Issue May). <https://data.europa.eu/doi/10.2826/844552>

42. Existing standards of good practice in due diligence, such as the [UN Guiding Principles on Business and Human Rights](#), recommend terminating supplier relationships only as a last resort. This may be one factor behind the apparent lack of implementation of termination clauses in practice. Requesting compliance measures before terminating contracts can be an effective measure for addressing modern slavery as illustrated by the Dell case study later in this Policy Brief.

Guidance, toolkits, training and resources

The OSCE was the first international organisation to have produced [guidance for their procurement staff on combatting human trafficking](#). The UK Government has published guidance on risk assessment and due diligence for public procurement, such as [‘Tackling Modern Slavery in Government Supply Chains’](#) in 2019. Most other countries reviewed in this Policy Brief have published similar guidance and some provide model contract clauses and training⁴³ ([see Table 1 at Annex A](#)).

Evidence is lacking on the implementation of due diligence in practice, with some exceptions,⁴⁴ partly because most countries do not impose modern slavery transparency/reporting requirements on public authorities. In the UK, the most common due diligence strategy undertaken by local authorities is the use of pre-qualification questionnaires such as the Crown Commercial Service’s Standard Selection Questionnaires (SSQs);⁴⁵ however, the supply chain mapping practices of local authorities are lacking, little detail is provided on their risk assessment practices, and there is little evidence of them using the Modern Slavery Assessment Tool (MSAT).⁴⁶

Collaborative approaches

There is evidence of collaborative initiatives that allow for the sharing of good practice in the UK⁴⁷ (such as the [London Universities Purchasing Consortium](#)) as well as, internationally, [Electronics Watch](#), the [Sweatfree Purchasing Consortium](#) in the US and the [Swedish Councils collaboration](#). These initiatives vary in scope and specific sector focus, as well as the extent to which they involve sharing common tools (e.g. codes of labour standards or standard contract performance conditions) or the pooling of resources to increase leverage over suppliers ([See Table 1 in Annex A](#)).

43. In the UK there is evidence of local authorities providing training on modern slavery to their staff and reporting it as a KPI. See Martin-Ortega, O., & Gorna, A. (2022). UK Modern Slavery Act Transparency in Supply Chains: Reporting by Local Authorities. BHRE Research Series. Report No. 5

44. In Canada the government undertook a risk assessment of human trafficking, forced labour and child labour in its supply chains in 2021 as part of its efforts to implement its National Strategy to Combat Human Trafficking. See Government of Canada. (2019). Labour Exploitation in global supply chains: What we heard report. <https://www.canada.ca/en/employment-social-development/programs/international-affairs/reports/what-we-heard-forced-labour-global-supply-chain.html> and Toronto Sun. (2021, August 11). Feds ensure government contracts do not include “slave-made” goods. Toronto Sun. <https://torontosun.com/news/feds-ensure-government-contracts-do-not-include-slave-made-goods>

45. Martin-Ortega, O., & Gorna, A. (2022). UK Modern Slavery Act Transparency in Supply Chains: Reporting by Local Authorities. BHRE Research Series. Report No. 5; Martin-Ortega, O., Gorna, A., Corradi, L., & Dehbi, F. (2020). UK Modern Slavery Act Transparency in Supply Chains: Reporting by Local Authorities. Research Series Report No. 4; Martin-Ortega, O., Gorna, A., & Islam, R. (2018). UK Modern Slavery Act Transparency in Supply Chains: Reporting by Local Authorities (Issue March). <https://doi.org/10.13140/RG.2.2.27917.59367>

46. Martin-Ortega, O., & Gorna, A. (2022). UK Modern Slavery Act Transparency in Supply Chains: Reporting by Local Authorities. BHRE Research Series. Report No. 5.

47. There is also emerging evidence of internal collaboration among councils in the UK and of external collaboration with the police, communities and NGOs but mostly focused on addressing risk to direct employees rather than the supply chain as found by Martin-Ortega, O., & Gorna, A. (2022). UK Modern Slavery Act Transparency in Supply Chains: Reporting by Local Authorities (Issue BHRE Research Series. Report No. 5) and Martin-Ortega, O., Gorna, A., Corradi, L., & Dehbi, F. (2020). UK Modern Slavery Act Transparency in Supply Chains: Reporting by Local Authorities. Research Series Report No. 4.

2. What does the evidence show about the effectiveness of different public procurement measures at addressing the risk of modern slavery?

Evidence rating: **Amber**

Key finding: There is limited evidence that has directly explored the effectiveness of specific public procurement measures at addressing modern slavery risk, though there are some case studies demonstrating public procurement measures have positively influenced supplier behaviour and contributed to reduced modern slavery risk. Several factors are likely to influence effectiveness: legal certainty, resources and capabilities, and collaboration influence how well public sector bodies implement the measures; contract management and market knowledge influence effectiveness of the measures at changing supplier behaviour; and national regulatory and sectoral systems, legislative design, and monitoring practices influence the effectiveness of the measures at addressing modern slavery. The effectiveness of modern slavery provisions can be increased if applied across different stages of the procurement cycle.

Types of effectiveness

For the purposes of this Policy Brief, we discuss three types of effectiveness:⁴⁸

Type 1: Implementation: Whether and to what extent public sector bodies implement the laws, policies and practices as intended.

Type 2: Influence: Whether and to what extent the applied laws, policies and practices work to influence change in suppliers as compared to previous behaviour.

Type 3: Address: Whether and to what extent these laws, policies and practices effectively address modern slavery (the number of cases of modern slavery prevented, mitigated or remediated).

The lack of direct evidence of effectiveness may be related to the lack of investment in evaluation, the lack of transparency in public procurement processes across the world, and the relatively recent implementation of some of these laws, policies and practices in some jurisdictions. When public authorities do report, such as in the UK where public authorities report voluntarily, the lack of evidence on the effectiveness of practices implemented might also be due to limited use of Key Performance Indicators (KPIs) to address modern slavery.⁴⁹

48. This framework is adapted from previous PEC research that has considered the effectiveness of measures to address modern slavery in supply chains, specifically Hsin, New, Pietropaoli and Smit 'Effectiveness of Section 54 of the Modern Slavery Act Evidence and comparative analysis', which considered transparency in supply chains, and a Policy Brief on effectiveness of [mandatory human rights due diligence legislation](#).

49. Martin-Ortega, O., Gorna, A., Corradi, L., & Dehbi, F. (2020). UK Modern Slavery Act Transparency in Supply Chains: Reporting by Local Authorities. Research Series Report No. 4.

Factors that influence effectiveness of implementation (Type 1)

Legal certainty

It is important for policies to be clear so that public buyers have certainty around their legal obligations, particularly where new legal requirements conflict with the long-established culture of prioritising value for money in high-income countries.⁵⁰ Procurement officials are less likely to exclude potential suppliers⁵¹ or undertake human rights due diligence if their obligations or permissible actions are unclear, since tendering organisations might challenge the procurement process leading to a delay in orders.⁵²

Tensions within legal regimes, for example those between primary aims (economic and efficiency criteria) and secondary aims (social criteria)⁵³ can also hamper implementation. For instance, one study found that local councils in the UK were cautious in their engagements with suppliers before and after tendering due to the restrictions on social criteria in the procurement system.⁵⁴

Resources and Capabilities

The availability of appropriate resources and capabilities, including knowledge and understanding of the issues, influences the effectiveness of undertaking supply chain mapping and risk assessments,⁵⁵ setting⁵⁶ and implementing clauses,⁵⁷ implementing exclusion criteria⁵⁸ and monitoring contract clauses.⁵⁹

For example, where specific high-risk sectors are identified and prioritised, there may be a lack of resource and knowledge to address risks in other sectors.⁶⁰ Public buyers may also struggle to find the appropriate and publicly available information to implement mandatory exclusion grounds.⁶¹

50. Hamilton, S. G. (2022). Public procurement – price-taker or market-shaper? *Critical Perspectives on International Business*, 18(4), 574–615. <https://doi.org/10.1108/cpoib-08-2020-0116>

51. The Danish institute for Human Rights. (2020). *Driving Change Through Public Procurement* (Issue March).

52. Methven O'Brien, C., Vander Meulen, N., & Mehra, A. (2016). *Public Procurement and Human Rights: A Survey of Twenty Jurisdictions*. 1–104; The Danish institute for Human Rights. (2020). *Driving Change Through Public Procurement*.

53. Martin-Ortega, O., & O'Brien, C. M. (2017). Advancing respect for labour rights globally through public procurement. *Politics and Governance*, 5(4), 69–79. <https://doi.org/10.17645/pag.v5i4.1073>

54. Martin-Ortega, O., Gorna, A., & Islam, R. (2018). UK Modern Slavery Act Transparency in Supply Chains: Reporting by Local Authorities (Issue March). <https://doi.org/10.13140/RG.2.2.27917.59367>

55. Martin-Ortega, O., Gorna, A., & Islam, R. (2018). UK Modern Slavery Act Transparency in Supply Chains: Reporting by Local Authorities (Issue March). <https://doi.org/10.13140/RG.2.2.27917.59367>

56. Swedwatch. (2016). Agents for change. How public procurers can influence labour conditions in global supply chains. Case studies from Brazil, Pakistan and Thailand. <https://swedwatch.org/publication/public-authorities-agents-for-change/>

57. SOMO. (2014). *A review of Dutch policy for socially responsible public procurement* (Issue March).

58. OECD (2020). *Integrating Responsible Business Conduct in Public Procurement*. https://www.oecd-ilibrary.org/governance/integrating-responsible-business-conduct-in-public-procurement_02682b01-en

59. Methven O'Brien, C., Vander Meulen, N., & Mehra, A. (2016). *Public Procurement and Human Rights: A Survey of Twenty Jurisdictions*. 1–104

60. Swedwatch. (2016). Agents for change. How public procurers can influence labour conditions in global supply chains. Case studies from Brazil, Pakistan and Thailand. <https://swedwatch.org/publication/public-authorities-agents-for-change> and Swedwatch, & Finnwatch. (2015). *Trapped in the Kitchen of the World: The situation for migrant workers in Thailand's poultry industry*. In Report 76. <https://swedwatch.org/wp-content/uploads/2021/01/76thaikyckling151123ab.pdf>

61. OECD (2020) *Integrating Responsible Business Conduct in Public Procurement*. https://www.oecd-ilibrary.org/governance/integrating-responsible-business-conduct-in-public-procurement_02682b01-en

One 2018 study showed that UK local authorities do not have sufficient resources to map their entire supply chains.⁶² Lack of ownership at different administrative levels can also be a challenge,⁶³ in many cases procurement teams are not responsible for defining contract clauses or for contract management.⁶⁴

Collaboration

Collaborative procurement practices between authorities, such as pooling purchasing power to increase leverage, can reduce costs, promote knowledge sharing and simplify evaluation processes,⁶⁵ especially as public buyers purchase many of the same goods and services as each other.⁶⁶ Evidence from public procurement authorities in the US and Sweden suggest that collaboration across authorities has the potential to make the implementation,⁶⁷ monitoring⁶⁸ and auditing⁶⁹ of labour rights criteria more efficient (see the case of Madison, Wisconsin in text box below).

Case study: City of Madison Sweatfree Purchasing Consortium

The City of Madison, Wisconsin, in consultation with the Sweatfree Purchasing Consortium, created a collaborative 'piggy-back' contract for uniforms in 2014, mainly used by Fire, Metro Transit, Police and other municipal operations agencies, to eliminate unsafe and illegal working conditions in apparel factories. The contract can still be used by all City of Madison agencies, approximately 167 other local government counties, cities, town and other public entities and agencies in the US. Each agency can join the procurement, which helps agencies with limited resources to participate in tenders without having to set the requirements themselves.⁷⁰

However, there are also barriers to collaboration across and within public procurement authorities. For instance, a research study of five UK public authorities in the emergency services sector found that inappropriate national solutions, a lack of intra-regional alignment, a perceived need for bespoke solutions and individual resource pressures constrained collaboration. In addition, the study found there was resistance to collaboration based on a belief among those public authorities that collaboration is risky and unsuitable.⁷¹

62. Martin-Ortega, O., Gorna, A., & Islam, R. (2018). UK Modern Slavery Act Transparency in Supply Chains: Reporting by Local Authorities. <https://doi.org/10.13140/RG.2.2.27917.59367>

63. See example of the Dutch government in Methven O'Brien, C., Vander Meulen, N., & Mehra, A. (2016). Public Procurement and Human Rights: A Survey of Twenty Jurisdictions. 1-104.

64. The Danish institute for Human Rights. (2020). Driving Change Through Public Procurement.

65. Meehan, J., Ludbrook, M. N., & Mason, C. J. (2016). Collaborative public procurement: Institutional explanations of legitimised resistance. *Journal of Purchasing and Supply Management*, 22(3), 160-170. <https://doi.org/10.1016/j.pursup.2016.03.002>

66. The Danish institute for Human Rights. (2020). Driving Change Through Public Procurement.

67. See the case of Madison, Wisconsin in The Danish institute for Human Rights. (2020). Driving Change Through Public Procurement (Issue March).

68. See the case of the Swedish SKL Kommentus Central Purchasing Body (SKI) in The Danish institute for Human Rights. (2020). Driving Change Through Public Procurement (Issue March) and the example of Electronics Watch in Martin-Ortega, O. (2018). Public Procurement as a Tool for the Protection and Promotion of Human Rights: A Study of Collaboration, Due Diligence and Leverage in the Electronics Industry. *Business and Human Rights Journal*, 3(1), 75-95. <https://doi.org/10.1017/bhj.2017.35>

69. See the case of the Swedish County Councils in Electronics Watch. (2016). Public Procurement and Human Rights Due Diligence to Achieve Respect for Labour Rights Standards in Electronics Factories: A Case Study of the Swedish County Councils and the Dell Computer Corporation. In *Electronics Watch: Vol. February*. https://electronicswatch.org/en/public-procurement-human-rights-due-diligence-a-case-study-of-the-swedish-county-councils-and-the-dell-computer-corporation-february-2016_2456642.pdf

70. The Danish institute for Human Rights. (2020). Driving Change Through Public Procurement.

71. Meehan, J., Ludbrook, M. N., & Mason, C. J. (2016). Collaborative public procurement: Institutional explanations of legitimised resistance. *Journal of Purchasing and Supply Management*, 22(3), 160-170. <https://doi.org/10.1016/j.pursup.2016.03.002>

Factors that influence the effectiveness of procurement measures at changing supplier behaviour (Type 2)

Contract and supplier relations management

Dialogue and partnership with suppliers, pre- and post-tender, can increase the effectiveness of contract clauses.⁷²

The longer the duration of a contract, the more opportunity there is to engage with suppliers⁷³ as it allows more time for relationships to be established and for suppliers to change their practices and meet new procurement requirements,⁷⁴ as well as to resolve or remediate any issues.

Case study: DELL Sweden

The Dell case in Sweden shows how the effectiveness of contract performance clauses is likely to increase when there is long-term engagement with suppliers and continuous work with them to develop their capacities rather than terminating relations. In this case, the Swedish County Councils engaged with Dell and Atea, the Swedish reseller of Dell, for 18 months after DanWatch first reported excessive working hours, forced overtime, inadequate safety conditions and payment below minimum wage in four Dell supplier factories in 2013. Ongoing dialogue and engagement, starting in February 2014, resulted in Atea's improvement of their supply chain due diligence processes. Dell also increased its transparency and disclosed detailed audit reports, records of working hours, corrective action plans, and status reports. Stockholm County Council will continue to meet with Atea until the end of the contract period to ensure continued improvement. Given the collaborative structure of the Swedish councils, once Stockholm County Council's contract with Atea ends, the national county council network can continue its engagement with Atea to improve its human rights due diligence and working conditions in its supply chain through another county council that contracts with the same supplier. This collaborative practice increases the capacity of public authorities for long-term engagement and sustainable improvements in the supply chain.⁷⁵

Market knowledge

Market engagement is one of the most significant unexploited opportunities to tackle labour rights in public procurement.⁷⁶ Several case studies show the importance of using market research to move from 'one-size fits all' approaches to an approach that is more sensitive to the different requirements of particular sectors and geographies.

72. See example of workwear procurement of the City of Ghent in European Commission Executive Agency for Small and Medium-sized Enterprises, Tepper, P., McLennan, A., Hirt, R., et al. (2020). Making socially responsible public procurement work: 71 good practice cases. (Issue May). <https://data.europa.eu/doi/10.2826/844552>

73. The Danish institute for Human Rights. (2020). Driving Change Through Public Procurement.

74. OSCE. (2021). Summary of OSCE Workshops on "Prevention of Human Trafficking in Supply Chains through Public Procurement" and recommended next steps.

75. Electronics Watch. (2016). Public Procurement and Human Rights Due Diligence to Achieve Respect for Labour Rights Standards in Electronics Factories: A Case Study of the Swedish County Councils and the Dell Computer Corporation. In Electronics Watch: Vol. February. https://electronicswatch.org/en/public-procurement-human-rights-due-diligence-a-case-study-of-the-swedish-county-councils-and-the-dell-computer-corporation-february-2016_2456642.pdf

76. OECD. (2020). Integrating Responsible Business Conduct in Public Procurement. https://www.oecd-ilibrary.org/governance/integrating-responsible-business-conduct-in-public-procurement_02682b01-en

At the pre-tender stage, market research can reveal what due diligence can reasonably be required of bidders as a minimum standard.⁷⁷ It can also establish a dialogue with a range of stakeholders that can inform what requirements are imposed and ensure that they are realistic and likely to be complied with.⁷⁸

By contrast, if a one-size-fits-all approach is taken, the result can be counter-productive. In one example, Sweden's National Agency for Public Procurement launched a tender for mobile phones with award criteria focused on conflict minerals due diligence where none of the bidders were able to report such due diligence procedures.⁷⁹

The effectiveness of modern slavery provisions can be increased if applied across different stages of the procurement cycle. In particular, award criteria may be most effective when combined with selection criteria, technical specifications and contract performance conditions,⁸⁰ as was demonstrated by the example of ICT procurement in Germany (see text box below).

Case study: Germany's approach to ICT procurement with market research

In Germany, the Federal Ministry for Economic Cooperation and Development took a two-step approach for an ICT pilot tender in 2016 based on market research on what the ICT supply chain market was able to prove in regards to human and labour rights. This research showed that effective verification of compliance with labour and social standards could not yet be provided by a broad range of bidders for the entire supply chain, given the complex supply chains in the industry, but it could for the first tier of the supply chain. As a result, the authorities used a combination of mandatory minimum criteria (technical specifications) for the first tier of the main subject of the tender (computers and monitors) and more advanced criteria to be factored in at award stage for the first tier of the peripheral tender (keyboards and PC mice) and for the second and further tiers of both tenders. The result was that almost all bidders complied with the minimum requirements and were incentivised to improve labour rights beyond the first tier of their supply chain.⁸¹

77. See ICT tender in Germany and textile tender in Ghent in European Commission Executive Agency for Small and Medium-sized Enterprises, Tepper, P., McLennan, A., Hirt, R., et al. (2020). Making socially responsible public procurement work: 71 good practice cases. (Issue May). <https://data.europa.eu/doi/10.2826/844552>

78. See Norway, municipality of Skien's incremental approach example in European Commission Executive Agency for Small and Medium-sized Enterprises, Tepper, P., McLennan, A., Hirt, R., et al. (2020). Making socially responsible public procurement work: 71 good practice cases. (Issue May). <https://data.europa.eu/doi/10.2826/844552>

79. Methven O'Brien, C., Vander Meulen, N., & Mehra, A. (2016). Public Procurement and Human Rights: A Survey of Twenty Jurisdictions. 1-104

80. European Commission. (2021). Buying Social - A guide to taking account of social considerations in public procurement (2nd edition).

81. European Commission Executive Agency for Small and Medium-sized Enterprises, Tepper, P., McLennan, A., Hirt, R., et al. (2020). Making socially responsible public procurement work: 71 good practice cases. (Issue May). <https://data.europa.eu/doi/10.2826/844552>

Factors that influence the effectiveness of measures at preventing or reducing modern slavery (Type 3)

Monitoring

Case study: procurement of surgical instruments from Pakistan

In Healthier Procurement, Swedwatch and the BMA looked at the impact of including labour rights and working conditions criteria as contract performance clauses in public contracts for the procurement of surgical instruments from Pakistan in 2014. The research found that, overall, working conditions in factories that were subject to these contractual obligations had improved. For instance, the prohibition of child labour was enforced, wages were paid appropriately, and employees were not forced to work overtime. Conversely, workshops where no social requirements were mandated showed little change since a previous study in 2007.⁸² A key factor in this case was the long-term commitment and monitoring from the contracting authority's side.⁸³ The study concluded that social contractual conditions could become 'merely an administrative burden with little impact' in the absence of monitoring (p.43).

National and sectoral regulatory systems

Because public procurement policies do not exist in a vacuum, wider national and sectoral labour regulatory systems can influence the impact of public procurement measures, such as contract clauses. One study looked at the role of labour clauses in addressing low wages in the subcontracted workforce in public supply chains across different sectors in Copenhagen (construction and cleaning), Leeds (care services), and Bremen (construction and catering). The study found that while all of them changed the previous status quo, their ability to tackle precarious work was strengthened where they complemented existing mechanisms of collective bargaining and labour market regulation by extending existing pay rates and other benefits to subcontracted staff, compared to those that compensated for weaker mechanisms of collective bargaining by raising wages but from a lower starting point and requiring additional resources.⁸⁴ This suggests that supportive national and sectoral labour systems are necessary for labour clauses to ultimately address modern slavery.

Legislative design

The design of laws is a key influence on the effectiveness of public procurement measures. For example, a law that requires the exclusion of suppliers from public procurement where they have been convicted for the crime of human trafficking may not be effective if there are very low conviction rates for traffickers.⁸⁵

There has been very limited research on the impacts of public procurement measures on directly affected individuals, including people with lived experience of modern slavery, and around the involvement of those individuals in the design of such measures.

82. Swedwatch, & BMA. (2015). Healthier Procurement. <https://swedwatch.org/publication/healthier-procurement/>

83. Swedwatch. (2016). Agents for change. How public procurers can influence labour conditions in global supply chains. Case studies from Brazil, Pakistan and Thailand. <https://swedwatch.org/publication/public-authorities-agents-for-change/>

84. Jaehrling, K., Johnson, M., Larsen, T. P., Refslund, B., & Grimshaw, D. (2018). Tackling Precarious Work in Public Supply Chains: A Comparison of Local Government Procurement Policies in Denmark, Germany and the UK. *Work, Employment and Society*, 32(3), 546-563.

85. Mbah, M., Cahill, D., & Ceri, E. (2021). Tackling Human Trafficking in Governments Supply Chains : Legal Certainty & Effectiveness Issues Under the Australian Commonwealth Procurement Rules. *Federal Law Review* (In Press).

3. What does the evidence show about the connections between public procurement measures and wider obligations on businesses to address modern slavery risk in their supply chains? For example, transparency regimes and mandatory human rights due diligence.

Evidence rating: **Red**

Key finding: There is limited evidence on the interactions between public procurement measures and other instruments that seek to address modern slavery in global supply chains, partly because many of these other instruments are relatively new. In some cases, non-compliance with a related instrument may exclude companies from bidding for public contracts. Public procurement measures that require companies to undertake or to demonstrate types of due diligence are likely to complement related measures that have similar overall objectives.

Examples of related instruments that have penalties including exclusion from bidding exist in Germany⁸⁶ and as part of proposed legislation in Austria.⁸⁷ Similarly, in the UK, failure to comply with s54 of the Modern Slavery Act 2015 constitutes a discretionary ground for exclusion under the Public Contracts Regulations 2015.⁸⁸ In Western Australia, there is a comparable but mandatory debarment provision.⁸⁹ There is no evidence as yet on the implementation of these provisions.

There is less evidence on the interaction between public procurement laws and forced labour import bans or other trade instruments. Only a few countries have introduced forced labour import bans, most notably the US,⁹⁰ but the limited evidence on their implementation⁹¹ means there is not yet evidence of their interaction with public procurement laws. However, some connections can be identified for specific public procurement provisions. For instance, in the US, whilst suppliers are required to certify that they will not supply products included in the 'List of Products Produced by Forced or Indentured Child Labor', contractors that are part of the WTO Government Procurement Agreement (GPA) or have free trade agreements with the US are exempt from this requirement.⁹² Scholars suggest public procurement could work as a complementary tool to social clauses in trade agreements⁹³ but there is no evidence as yet of what mechanisms might facilitate this or what challenges might arise.

86. See Döring, Laura and Sukurica, Ilda (2021): [Germany takes important steps towards sustainable textile procurement](#).

87. Clifford Chance. (2022). BUSINESS AND HUMAN RIGHTS NAVIGATING A CHANGING LEGAL LANDSCAPE (Issue January)

88. Business and Human Rights Resource Centre. (2017). Modern Slavery in Company Operation and Supply Chains: Mandatory transparency, mandatory due diligence and public procurement due diligence (Issue September).

89. Clifford Chance. (2022). BUSINESS AND HUMAN RIGHTS NAVIGATING A CHANGING LEGAL LANDSCAPE (Issue January).

90. Other jurisdictions are considering labour ban instruments such as the European Commission who recently published a [Proposal to ban products made with forced labour, and the UK where a Bill to prohibit the import of products made by forced labour in the Xinjiang Uyghur Autonomous Region](#) is in progress.

91. Pietropaoli, I., Johnstone, O., & Balch, A. (2021). Policy Brief: Effectiveness of forced labour import bans. July, 1-9. <https://modernslaverypec.org/assets/downloads/PEC-Policy-Brief-Effectiveness-Forced-Labour-Import-Bans.pdf>

92. Methven O'Brien, C., Vander Meulen, N., & Mehra, A. (2016). Public Procurement and Human Rights: A Survey of Twenty Jurisdictions. 1-104

93. Martin-Ortega, O., & O'Brien, C. M. (2017). Advancing respect for labour rights globally through public procurement. *Politics and Governance*, 5(4), 69-79. <https://doi.org/10.17645/pag.v5i4.1073>

4. What does the evidence show about any potential wider consequences of using public procurement as a lever to address modern slavery in supply chains?

Evidence rating: **Red**

Key finding: There is very limited evidence of any wider consequences of using public procurement as a lever to address modern slavery in supply chains. A possible unintended consequence is that it could lead to unfair or discriminatory market practices, such as if SMEs are less able to prove due diligence practices.⁹⁴ Similarly, the integration of non-commercial criteria in public procurement has raised concerns in relation to potential barriers to trade for developing countries⁹⁵ who might struggle to fulfil the new requirements. There is also the potential risk of overburdening businesses, suggesting a need for governments to aim to harmonise their public procurement laws and policies with wider regulatory instruments for businesses.⁹⁶

5. What are the priorities for future research in this area?

- Comparative research exploring public and private sector approaches to modern slavery in supply chains to draw lessons from good practices in the private sector and to explore how both sectors could collaborate to improve standards and harmonise approaches.
- Analysis of the interactions between public procurement laws and international trade agreements, forced labour import bans, mandatory human rights due diligence laws and transparency laws as these start to be implemented worldwide.
- Robust evaluations of the effectiveness of specific public procurement measures at addressing modern slavery.
- Exploration of how public procurement policymakers and practitioners could effectively and equitably include people who have lived experience of modern slavery in the design and implementation of laws, policies and practices.
- Comparative research exploring the interrelation between modern slavery and other social public procurement policy objectives, to identify possible trade-offs and complementarities.

94. Justice & Care. (2022). Modern Slavery in Global Supply Chains: The state of evidence for key government and private Modern Slavery in Global Supply Chains (Issue July).

95. Hamilton, S. G. (2022). Public procurement – price-taker or market-shaper? *Critical Perspectives on International Business*, 18(4), 574–615. <https://doi.org/10.1108/cpoib-08-2020-0116>

96. OSCE. (2021). Summary of OSCE Workshops on "Prevention of Human Trafficking in Supply Chains through Public Procurement" and recommended next steps.

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Modern Slavery and Human Rights Policy and Evidence Centre
c/o British Institute of International and Comparative Law
Charles Clore House, 17 Russell Square, London, WC1B 5JP

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office@modernslaverypec.org

www.modernslaverypec.org