

**GOVERNMENT RESPONSE TO THE  
UK CONSULTATION ON THE  
TERMS OF REFERENCE FOR AN  
UPDATE OF THE OECD  
GUIDELINES FOR MULTINATIONAL  
ENTERPRISES**

March 2010

URN 10 / 802

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**Additional copies:**

The Government's response is available electronically<sup>1</sup> from the consultation page of the UK NCP website. You may make copies of this document without seeking permission. Other versions of this document can be made available on request in Braille, other languages, large fonts and other formats. Contact the Departmental contact above.

**Date of publication:**

19 March 2010

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<sup>1</sup> <http://www.bis.gov.uk/policies/business-sectors/low-carbon-business-opportunities/corporate-responsibility/uk-ncp-oecd-guidelines/consultations>

## **Abbreviations:**

- **OECD** = Organisation for Economic Cooperation and Development<sup>2</sup>
- **Guidelines** = OECD Guidelines for Multinational Enterprises<sup>3</sup>.
- **RAT** = Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones<sup>4</sup>.
- **NCP** = National Contact Point
- **Ruggie** = John Ruggie – UN Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises.
- **Ruggie’s framework** = three pillars approach: 1) state duty to protect human rights; 2) corporate responsibility to respect human rights; 3) access to remedy. See Ruggie’s reports of 7 April 2008 and 22 April 2009 to the UN Human Rights Council<sup>5</sup>.
- **UN** = United Nations
- **ILO** = International Labour Organisation<sup>6</sup>
- **BIAC** = Business and Industry Advisory Committee to the OECD<sup>7</sup>
- **TUAC** = Trade Union Advisory Committee to the OECD<sup>8</sup>

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<sup>2</sup> [http://www.oecd.org/department/0,2688,en\\_2649\\_34889\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/department/0,2688,en_2649_34889_1_1_1_1_1,00.html)

<sup>3</sup> [www.oecd.org/dataoecd/56/36/1922428.pdf](http://www.oecd.org/dataoecd/56/36/1922428.pdf)

<sup>4</sup> [www.bis.gov.uk/files/file46193.pdf](http://www.bis.gov.uk/files/file46193.pdf)

<sup>5</sup> <http://www2.ohchr.org/english/issues/globalization/business/reports.htm>

<sup>6</sup> <http://www.ilo.org/global/lang-en/index.htm>

<sup>7</sup> <http://www.biac.org/>

<sup>8</sup> <http://www.tuac.org/en/public/index.phtml>

## **1. Executive Summary**

1. This document is the Government response to the UK consultation on the terms of reference for an update of the OECD Guidelines for Multinational Enterprises (the Guidelines). The consultation was published on 27 October 2009<sup>9</sup>, and follows the last review of the Guidelines in 2000. If agreement can be reached on the terms of reference, negotiations on the update are expected to begin following the next OECD Ministerial Council Meeting in late May 2010.
2. The UK Government supports an update of the Guidelines<sup>10</sup>, and therefore set up a consultation process to obtain the views of UK stakeholders on the terms of reference for an update of the Guidelines. The OECD has itself been consulting with its key stakeholders, other OECD bodies, international partner organisations and non-adhering countries. The UK Government feels that by providing support for an update, this offers an opportunity to exploit the UK's strong position as an 'effective' NCP to influence the outcome of the OECD consultations. The Government believes the potential benefits of an update include: promoting a level-playing field for UK multinationals; improving the Guidelines' contribution towards sustainable development; potentially raising the standard of operation of the NCPs in other countries; and increasing the reach of the Guidelines (i.e. increase the number of adhering countries).
3. The Government's response to the consultation aims to provide an overview of responses received from UK stakeholders which will help to formulate the UK's negotiating position. As negotiations on the terms of reference are still on-going, the Government's response does not set out its negotiating stance (although it does indicate the Government's key priorities). Agreeing the terms of reference for the proposed update of the Guidelines will require consensus among adhering countries, so it is important for the UK to maintain flexibility in order to influence the outcome of the OECD consultations.
4. In order to get views on as wide a scope of issues as possible within the Guidelines, the Government sought stakeholders' views on specific questions that have been raised since the last update in 2000, and also on any other issues that stakeholders feel need addressing as part of the update.
5. There was a general consensus amongst stakeholders who responded on the need to update the OECD Guidelines, but there was no real call for a root and branch review. In particular, stakeholders expressed support for updating a number of aspects of the Guidelines, including on: human rights, supply chains, the environment, employment, consumer interests, and the functional equivalence of NCPs.

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<sup>9</sup> <http://www.bis.gov.uk/files/file53319.pdf>

<sup>10</sup> <http://www.oecd.org/dataoecd/56/36/1922428.pdf>

6. Based on these wide ranging stakeholders' views, the Government supports the following areas as the UK's key priorities for inclusion in the terms of reference for the Guidelines' update:
  - *Supply chains* - to provide practical guidance to multinationals on the application of due diligence in their supply chains, to promote agreed UN and ILO social and labour standards, as well as gender equality (as reflected in the ILO Decent Work agenda), down their supply chain.
  - *Human Rights* - to provide clearer, practical guidance to assist multinationals in respecting human rights, including gender equality, using a due diligence and risk awareness process.
  - *Employment and industrial relations* - clarifying the Guidelines to make clear that whilst multinationals should conform to the host country's law, they should also take into account the ILO Declaration on Fundamental Principles and Rights at Work.
  - *Environment* - expansion of the existing recommendations specifically to address the issue of climate change.
  - *Consumer Interests* - expansion of the current consumer chapter to give favourable consideration to additional wording on improving consumers' education.
  - *Functional equivalence* – to provide more detailed (non-prescriptive) guidance on: the structure of NCPs; the NCP complaints process; the issue of parallel proceedings; and follow-up to final statements by NCPs (in line with the UK NCP's practice).
7. The Government acknowledges the need for the promotion of the Guidelines more widely; and also that technical updates will need to be made to the Guidelines, particularly to ensure that new relevant international instruments, which have entered into force since the last review of the Guidelines, are captured in the revised document.
8. There was also some interest from stakeholders on a number of other aspects of the Guidelines which they felt needed updating, including: taxation, disclosure, combating bribery, and the financial sector. One response also raised the issue of de-coupling the Guidelines from the OECD Declaration on International Investment and Multinational Enterprises. The Government will therefore also seek to address and take forward these issues during the negotiations.
9. A number of stakeholders mentioned that the UK NCP has developed a number of helpful guidance procedures on the Guidelines (e.g. on the complaint process, follow up to final statements, parallel proceedings, and retrospective application of the Guidelines), which they suggested

could be incorporated into the updated procedural guidance. The Government would be happy for the OECD to draw on any of the UK NCP's guidance documents that it has developed in liaison with its Steering Board.

10. The Government supports Ruggie's work towards proposing ways to implement his framework on business and human rights, and will therefore support a Ruggie-based due diligence approach, and adequate guidance to multinationals, in the context of the update of the Guidelines.

## **2. Introduction**

11. At their Annual Meeting on 16-17 June 2009, NCPs recommended that under the auspices of the OECD Investment Committee, adhering countries review the experience gained from the implementation of the Guidelines with a view to defining terms of reference for a possible update of the instrument. Shortly thereafter, at the June 2009 OECD Council Meeting at Ministerial level, ministers welcomed “further consultation on the updating of the OECD Guidelines to increase their relevance and clarify private sector responsibilities”.
12. Therefore, on 27 October 2009, in line with this commitment, and given the UK Government’s support for an update of the Guidelines, the Government published a consultation document seeking views from UK stakeholders on the terms of reference for an update of the Guidelines.
13. The main aims of the consultation process in the UK was to collect the views of UK stakeholders on the priority areas for an update of the Guidelines based on, but not limited to, the potential terms of reference listed in this document. This would then assist the UK Government in identifying options for possible technical or more substantive updates of the text of the Guidelines and supporting Commentaries leading to the UK Government developing a position on the update of the Guidelines.
14. In line with the Government’s consultation code of practice, the consultation was run for 12 weeks (until 25 January 2010). However, stakeholders were also offered the opportunity of sending initial responses by the earlier date of 30 November 2009, in advance of the 8/9 December 2009 OECD meetings to discuss the update of the Guidelines.
15. In order to get views on as wide a scope of issues as possible within the Guidelines, the Government sought views on specific questions that have been raised since the last update in 2000. This includes the recent work of Professor Ruggie and discussions with stakeholders, other NCPs, the OECD Investment Committee and its Working Party.
16. The consultation document therefore posed 16 specific questions on the merits of updating the Guidelines’ recommendations and/or the supporting Commentaries, covering issues related to the substantive provisions of the Guidelines (i.e. supply chain, human rights, disclosure, environment, consumer interests, and taxation); and issues related to technical updates and Procedural Guidance (e.g. functional equivalence of the NCPs). The last question offered stakeholders the opportunity to comment on any other issues or aspects of the Guidelines they felt needed addressing as part of the update (which had not been covered in the other questions).

17. The consultation document was circulated to over 100 stakeholders, covering a wide range of organisations including: individual businesses; business organisations; trade unions; non-governmental organisations (NGOs); UK human rights institutions; trade bodies; international bodies; consumer bodies; law firms and legal bodies; Parliament; and governmental organisations. A full list of the individuals/organisations consulted is available at Annex A of the consultation document.
18. In addition to this, and to ensure that the consultation was as effective as possible, the UK NCP hosted a multi-stakeholder event on 9 November (2009)<sup>11</sup> to gather stakeholders' views. This event attracted 60 attendees representing a range of organisations. The open invitation for this event was published on the UK NCP's website and circulated to businesses, unions, and NGOs.
19. The Government received a total of 17 written responses to the consultation document. These responses came from: businesses, business organisations, unions, NGOs, trade bodies, and some individuals. The list of respondents is included in this document (Annex A). Section 3 of this document summarises the responses received from these stakeholders.

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<sup>11</sup> <http://www.bis.gov.uk/files/file53177.pdf>

### **3. SUMMARY OF STAKEHOLDERS' RESPONSES AND THE GOVERNMENT RESPONSE**

#### ***Technical Updates***

#### **Question 1. Are technical updates of the OECD Guidelines needed, and if so what aspects?**

20. 11 respondents addressed this question. There was a consensus that technical updates/amendments are needed to ensure that the Guidelines remain accurate and up to date, and include references to international instruments, which have been introduced since June 2000 and are relevant to the Guidelines.
21. One response suggested that most of the technical updates could be made by expanding the references contained in the Commentaries of the Guidelines and could be included as annexes to the Guidelines' Procedural Guidance. The Commentaries and the annexes could then be regularly updated by the OECD Secretariat.

#### **Government Response**

22. The Government agrees that technical updates are required, particularly to ensure that new relevant international instruments, which have been introduced since the last review of the Guidelines, are captured in the revised document.

#### ***Supply Chain***

#### **Question 2. Is clearer guidance required regarding the application of the Guidelines to supply chains, and if so, what should this include?**

23. 11 respondents addressed this question. The majority of the responses acknowledged that a due diligence approach is required by companies in their supply chain regardless of the size of the company, and that enhanced supply chain due diligence is required in conflict or weak governance zones. A number of respondents suggested that the Guidelines should provide clear and practical guidance for companies on how to apply a due diligence approach in their supply chain.
24. One respondent suggested amending the Guidelines to recommend that enterprises pay a living wage to workers in their supply chains. Another respondent thought supply chain issues should have a separate chapter in the Guidelines (including practical guidance for companies based on Ruggie's framework). Two respondents suggested that the OECD should explore this area in more detail, taking into account existing guidance on supply chain issues. One respondent pointed out that a due diligence approach should be disseminated to a broad range of actors including the agriculture, oil and gas sectors.

25. A number of respondents suggested clarifying the requirement for an investment nexus<sup>12</sup> before the Guidelines can be applied. One respondent suggested removing this requirement.

### **Government Response**

26. The Government supports expanding the existing references to the supply chain in the Guidelines in order to provide practical guidance to multinationals on applying a due diligence approach in their supply chains, in accordance with agreed UN and ILO social and labour standards.

### **Human Rights**

<b>Question 3. Should the human rights section of the Guidelines be updated, and if so, what should it include?</b>
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27. 11 respondents addressed this question and suggested that the reference to human rights in the Guidelines needs expanding, particularly in order to clarify how it applies to (and can be applied by) businesses. Most respondents thought that this could be achieved by having a new human rights chapter in the Guidelines, based on Ruggie's framework.
28. Respondents suggested a number of international instruments or reports that the Guidelines should refer to, bearing in mind that countries adhering to the Guidelines may not have ratified the same international instruments. Some of these instruments and reports are: key international human rights instruments and declarations, ILO conventions, report of the International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes, Equator Principles<sup>13</sup>, and the World Bank's guidelines<sup>14</sup> on involuntary relocations.

### **Government Response**

29. The Government supports the expansion of the existing references to human rights in the Guidelines in order to provide clearer, practical guidance to assist multinationals in respecting human rights, including gender equality, using a due diligence and risk awareness process.

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<sup>12</sup> Any transaction covered by the Guidelines should include an "investment nexus", i.e. an operation equivalent to investment. The OECD currently allows for some flexibility on this issue. See [http://www.oecd.org/document/42/0,3343,en\\_2649\\_34889\\_37356074\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/42/0,3343,en_2649_34889_37356074_1_1_1_1,00.html)

<sup>13</sup> <http://www.equator-principles.com/>

<sup>14</sup> <http://go.worldbank.org/ZAIUSU8970>

## ***Disclosure***

### **Question 4. Should the disclosure chapter of the Guidelines be updated, and if so, what should this include?**

30. 7 respondents addressed this question. Most respondents thought that the disclosure chapter of the Guidelines needs updating. One respondent raised the need to take into account recent UN and OECD instruments on combating bribery and corruption, and refer to the Extractive Industries Transparency Initiative (EITI)<sup>15</sup>.
31. Other respondents suggested: ensuring companies' disclosure of their environmental and human rights impact assessments (as part of the consultation process with the affected communities); the need for more transparency on mining companies' assessments of projects and production sharing agreements; and also the need for companies to report on disputes with local communities.
32. One respondent suggested that a balance must be reached between existing disclosure requirements from national regulation and what the Guidelines recommend, taking into account available company-based guidance tools.

## **Government Response**

33. The Government will be seeking to ensure that any update to the disclosure chapter of the Guidelines incorporates upgraded standards for disclosure that have emerged since the 2000 Revision of the OECD Guidelines<sup>16</sup>.

## ***Environment***

### **Question 5. Is there a need to clarify the application of Chapter V on Environment to climate change and green issues, and if so what should the chapter cover?**

34. 13 respondents addressed this question. Most respondents suggested that references to climate change should be added to the environment chapter of the Guidelines.
35. Respondents suggested addressing the link between environmental harm caused by companies' operations and its impact on people's enjoyment of their human rights, whilst retaining the reference to health and safety issues. One respondent suggested that the Guidelines should insist on the need for full disclosure of Environmental and Social

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<sup>15</sup> <http://eitransparency.org/>

<sup>16</sup> <http://www.bis.gov.uk/files/file46192.pdf>

Impact Assessments (ESIAs) and of all social and environmental provisions contained in development agreements or contracts.

36. Other respondents suggested that the environment chapter requires updating to ensure enterprises are obliged to take steps towards achieving a “just transition” and a fair sustainable shift to a low carbon economy, a key part of which is replacing carbon intensive jobs with green ones.
37. Respondents also suggested reflecting existing commitments under the UN Framework Convention on Climate Change<sup>17</sup> and the Convention on Biological Diversity. Additional environment-related challenges should also be mentioned, such as water supply, sanitation, food security, energy security, ecosystem, and waste management. One respondent did not consider that climate change warranted specific reference as part of the update.

### **Government Response**

38. The Government supports the expansion of the environment chapter of the Guidelines in order to address the issue of climate change.

### ***Consumer Interests***

<b>Question 6. Should the consumer chapter of the Guidelines be expanded, and if so, what should it include/cover?</b>
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39. 6 respondents addressed this question and suggested that the consumer chapter of the Guidelines should be updated and expanded.
40. One respondent suggested updating the chapter without diluting the health and safety concerns it currently addresses. Moreover, the chapter should be expanded to address the whole user chain of a company’s products and services (e.g. harmful effects of pesticides on agricultural workers, unethical clinical trials of pharmaceutical products). One respondent suggested covering financial education, green products and ethical sourcing. Another respondent suggested updating the consumer chapter to take account of recent UN or OECD instruments, including efforts to strengthen global regulation in the wake of the financial crisis.
41. Other suggestions included the need for environmental, human rights, and financial risk disclosure to consumers; and for more guidance on distance selling to protect consumers, taking into account current EU law requirements.

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<sup>17</sup> <http://unfccc.int/2860.php>

## **Government response**

42. The Government supports the expansion of the current consumer chapter to give favourable consideration to additional wording on improving consumers' education.

## ***Taxation***

<b>Question 7. Should the taxation chapter of the Guidelines be updated, and if so, what should it include/cover?</b>
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43. 9 respondents addressed this question. Most respondents suggested that the taxation chapter needed updating, with views varying on what should be included in the update.
44. Some respondents suggested addressing issues such as: creative tax evasion by companies; businesses avoiding being complicit in human rights abuses through the taxes they pay to local actors who commit the abuses; multinationals using the threat of withdrawing their investment to put pressure on host governments to reduce taxation levels or even provide exemptions; disclosing tax information to host governments.
45. Other respondents considered that it may be necessary to update the Commentaries to the Guidelines to reflect recent developments and address issues such as: enhanced relationship between taxpayers and authorities; dispute resolution mechanisms and the practicality of the Transfer Pricing Guidelines. One respondent suggested that the current chapter remained an adequate description of the OECD Principles on International Taxation and still constituted appropriate guidance to multinationals on tax issues.

## **Government Response**

46. The Government has noted stakeholders' views on updating the taxation chapter and will be seeking to address these issues during the negotiations.

## ***Risk Awareness Tool***

<b>Question 8. How can the Risk Awareness Tool be more closely associated with the implementation of the Guidelines?</b>
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47. Various respondents referred to the RAT with the general consensus that it should be more closely associated with the implementation of the Guidelines.
48. Respondents suggested that the RAT should provide more practical advice, taking into account other instruments on weak governance and conflict zones.

## Government Response

49. The Government has noted stakeholders' views in respect of the RAT and will be seeking to address these issues during the negotiations.

## Functional Equivalence

**Question 9. Does the procedural guidance need to be updated to give greater direction to institutional structure and functioning of NCPs, and if so, how?**

50. 11 respondents addressed this question. The general consensus was that the Guidelines should contain minimum standards of performance for National Contact Points across the OECD, which are clear and transparent.
51. Most respondents suggested that any update could be based on the UK NCP's complaint procedure<sup>18</sup>, particularly: timetable (complaints aimed to be resolved within 12 months); independent professional conciliation/mediation; monitoring mechanism of the work of the NCP (i.e. Steering Board); right of both parties to request a review of the final statement (on procedural grounds).
52. Most respondents also mentioned the need to raise awareness of the Guidelines (and the RAT) amongst businesses, in order to avoid complaints and reputational risk. Some respondents suggested that the complaint process should be based on Ruggie's framework, and that final statements should be enforced by reviewing any government financial or export credit support to companies found in breach of the Guidelines (or refusing to engage with the OECD Guidelines' process).

## Government Response

53. The Government supports the inclusion of more detailed (non-prescriptive) guidance on the structure of the NCPs, including the complaint process, in the terms of reference for an update of the Guidelines. The Government will support the introduction of a review process to the extent that it is alleged by one of the parties to the complaint that there were *procedural* errors in the NCP's handling of the complaint.

## ***Ensuring credibility and efficiency in the implementation of the Specific Instance procedure***

**Question 10. How can the complaints procedures of the current Guidelines be improved?**

<sup>18</sup> <http://www.bis.gov.uk/files/file53070.pdf>

54. Respondents addressed this issue as part of the response to question 9. Most respondents suggested clear and transparent complaint procedures being introduced with specific timelines; citing the UK three stages (twelve months) complaint handling process, as something the update could be based on.
55. One respondent suggested expanding the complaint procedures to include an appeal process for complainants not satisfied with final statements of the NCPs.

### **Government Response**

56. The Government supports the inclusion of more detailed (non-prescriptive) guidance on the structure of the NCPs, including the complaint process, in the terms of reference for an update of the Guidelines. The Government will support the introduction of a review process to the extent that it is alleged by one the parties to the complaint that there were *procedural* errors in the NCP's handling of the complaint was procedurally flawed.

### ***Parallel Proceedings***

**Question 11. Would there be merit in developing further guidance on parallel proceedings and building it in the Procedural Guidance or Commentary, and if so, what type of guidance?**

57. 5 respondents addressed this question. Most respondents suggested clarifying the NCPs' approach to parallel proceedings. Some respondents suggested using the UK NCP's guidance on parallel proceedings<sup>19</sup>.
58. Respondents suggested making it clear that the Guidelines are not a substitute for, nor do they override applicable law or are intended to create any conflicting requirements upon a multinational; and that the complaint procedures should require parties submitting a complaint to disclose whether they were also seeking to address the same issue through other venues.

### **Government Response**

59. The Government supports the inclusion of more detailed guidance on the issue of parallel proceedings, in the terms of reference for an update of the Guidelines.

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<sup>19</sup> <http://www.bis.gov.uk/files/file53069.pdf>

### ***Follow-up to the publication of a final statement***

**Question 12. Is there scope for adding references to the NCP following-up on the publication of a final statement by building it in the Procedural Guidance or Commentary, and if yes, what type of follow-up?**

60. 6 respondents addressed this question. Most respondents suggested including in the Guidelines a follow-up to the publication of a final statement by an NCP, to find out whether the recommendations made in the statement have been implemented.
61. Some respondents suggested linking the complaint process with an enforcement mechanism (e.g. reviewing/withdrawing government financial or export credit support). Other respondents suggested including in the updated Guidelines, the follow up procedures introduced by the UK NCP, with a need for adhering governments to ensure that there are clear consequences following a negative final statement and failure by the company concerned to implement the NCP's recommendations.

#### **Government Response**

62. The Government supports the inclusion of more detailed guidance on the follow up to final statements by NCPs (in line with UK NCP's practice).

### ***Retrospective guidance on new complaints***

**Question 13. Would there be merit in further developing retrospective guidance on new cases and building it into the Procedural Guidance or Commentary, and if so, what type of guidance?**

63. Only one respondent addressed this question and suggested putting in place clear transitional arrangements to avoid the confusion that occurred after the last update, and minimise the risk of procedural challenges and delays to resolving cases.

#### **Government Response**

64. The UK NCP published, (following agreement from the Steering Board), guidance<sup>20</sup> on how the UK NCP would handle any new complaints it received after 18 June 2008 that alleged breaches of the OECD Guidelines in relation to activities prior to 2000, when the latest revision of the Guidelines was published. As this will become an issue when the current Guidelines are updated, the Government is happy for the UK NCP guidance on retrospective application of the Guidelines, to be used as a basis for any discussion on how this issue will be handled.

<sup>20</sup> <http://www.bis.gov.uk/files/file47556.pdf>

## ***Specific Instances in the Financial Sector***

**Question 14. Is clarification needed on the circumstances under which NCPs could accept a complaint against a financial institution, and if so, what type of clarification is needed?**

65. 3 respondents addressed this question and suggested that financial institutions should be covered by the Guidelines, including the complaint procedure, taking into account the Equator Principles.

### **Government Response**

66. The Government has noted stakeholders' views on specific instances in relation to the financial sector and will be seeking to address this issue during the negotiations.

### **Peer Review**

**Question 15. Should a more structured peer review process be considered and built into the Procedural Guidance or Commentary of the Guidelines, and if so what type of review process?**

67. 5 respondents addressed this question. There was general consensus that there should be a peer review process (to improve NCPs' performance), although views on whether this should be voluntary (like the current peer review of the Netherlands NCP) or mandatory (in line with OECD best practice) varied.
68. One respondent also suggested taking into account the experience of the Financial Action Task Force<sup>21</sup>. Another respondent suggested a process of peer review which could be formalised as part of the handling of multi-country complaints, where a complaint is filed with more than one NCP. This would mean while one NCP leads, the other NCPs could provide oversight or mentoring.

### **Government Response**

69. The Government recognises the established OECD principle of peer review and the UK NCP has participated in the recent voluntary peer review of the Netherlands NCP. The Government would like to see the results of the peer review of the Netherlands NCP before deciding its approach on this issue. The main findings and lessons learned from the Netherland peer review will be presented at the OECD Investment Committee Working Party meeting on 24 March (2010), and discussed at the Annual NCP meeting on 29 June.

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<sup>21</sup> [www.fatf-gafi.org/](http://www.fatf-gafi.org/)

## **Other Issues**

**Question 16. Apart from the possible issues listed above, are there any other specific issues or parts of the OECD Guidelines that need updating, and if so, what should this include/cover?**

70. For question 16, stakeholder were asked to comment on any other issues not covered in the other 15 questions. Respondents commented on the issues of: employment and industrial relations; combating bribery; and de-coupling the Guidelines from the OECD Declaration on International Investment and Multinational Enterprises.

### **16(a) Employment and Industrial Relations**

71. 4 respondents addressed employment and industrial relations. There was support for language placing a positive obligation on enterprises to provide direct and permanent employment. There was also support for sub clause 1(d) of Chapter IV of the Guidelines to have a more expansive list of grounds upon which discrimination occurs, including sexuality, disability, age, marital status, and union membership. In addition, there was a call for this clause to apply not just in respect of employment or occupation, but also of hiring staff, compensation, access to training, promotion, termination of employment and retirement. Respondents also suggested engaging with the ILO and making explicit reference in the Guidelines to ILO conventions that may affect businesses.

### **Government Response**

72. The Government supports clarifying the Guidelines to make clear that, whilst multinationals should abide by the host country's law, they should also take into account the ILO Declaration on Fundamental Principles and Rights at Work.

### **16(b) Combating Bribery**

73. 4 respondents addressed the issue of combating bribery.
74. One respondent suggested highlighting the demand side of corruption where they thought business often faces a lot of pressure. Another respondent suggested that there should be: explicit references to corruption in relation to trade as well as to money laundering, and the compliance measures expected of companies; enhanced references to whistleblower protection, and a clear prohibition of payment of bribes through intermediaries and third parties.

### **Government Response**

75. The Government has noted stakeholders' views on updating the combating bribery chapter of the OECD Guidelines and will be seeking to address this issue during the negotiations.

### **16(c) De-coupling**

76. One respondent suggested de-coupling the Guidelines from the OECD Declaration on International Investment and Multinational Enterprises but also expressed concerns that such a de-coupling might lead some governments to consider that their formal obligation to implement the Guidelines (by setting up an NCP) would therefore cease.

### **Government Response**

77. The Government expects this issue to be discussed in more depth at future OECD meetings, and will therefore be considering its position in light of these discussions.

#### **4. NEXT STEPS**

78. The positions set out in the government response will be taken forward by the UK as part of the negotiations at the OECD. Meetings to discuss the update of the Guidelines are currently planned as follows:

- **24 March** – OECD Working Party of the Investment Committee meeting for NCPs to discuss the latest draft of the Terms of Reference;
- **24 March** – OECD further Consultation meeting with BIAC<sup>22</sup>/ TUAC<sup>23</sup>/ OECD Watch<sup>24</sup>;
- **27-28 May** - OECD Ministerial Council Meeting (possible formal adoption of the terms of reference for an update);
- **29 June** – Annual NCP meeting (possible first reading of the procedures/process for the update);
- **30 June - 1 July**: OECD Corporate Responsibility Roundtable to hold three “brainstorming” sessions on Supply Chains, Human Rights and Climate Change and possible implications for an update; and
- **1 July** : The OECD Investment Committee Working Party to possibly discuss the general organisation of the update.

79. Further meetings of the OECD Investment Committee and its Working Party are planned as follows (with the aim of concluding the update by the second half of 2011):

- **4-8 October 2010**
- **13-17 December 2010**
- **21-25 March 2011**
- **13-17 June 2011**

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<sup>22</sup> <http://www.biac.org/>

<sup>23</sup> <http://www.tuac.org/en/public/index.phtml>

<sup>24</sup> <http://oecdwatch.org/>

## **ANNEX A: LIST OF ORGANISATIONS RESPONDING**

- Airbus
- All Party Parliamentary Group (APPG) on Great Lakes Region on behalf of the Joint Working Group
- Amnesty International (UK)
- Confederation of British Industry (CBI)
- Co-operative Asset Management
- Institution of Occupational Safety and Health
- International Bar Association
- International Chamber of Commerce (UK)
- Joras, Ulrike (personal views) - International Alert
- London Mining Network
- Parris, Lee
- Prospect Union
- Rights and Accountability in Development (RAID)
- Richard Ross, Richard (personal views) - London Metropolitan University
- Shell
- Synergy Global Consulting
- Trade Union Congress (TUC)