

CORE

PUTTING PEOPLE & THE PLANET
AT THE CORE OF BUSINESS

Briefing for the General Debate on the Implementation of the Modern Slavery Act 2015, 26 October 2017

About CORE

CORE is the UK civil society coalition on corporate accountability. We work with our partner organisations to advance the protection of human rights and the environment with regard to the global operations of UK companies, by promoting a stronger regulatory framework, higher standards of conduct, compliance with the law, and improved access to remedy for those harmed by the activities of UK companies.¹

1. Corporate reporting on modern slavery: the Transparency in Supply Chains (TISC) clause

Summary of requirements under the Act:

- The Act requires all companies operating in the UK with a **turnover of more than £36 million** to publish an annual slavery and human trafficking statement setting out the steps taken to eradicate modern slavery from supply chains and operations.
- There are **no specific content requirements for statements**, but the Home Office recommends that companies report on six topics listed in the Act. Companies can report that they have taken no steps.
- Statements must be signed by a director on behalf of the board and available from a link on the homepage of the company's website. **Statements do not have to be filed with a government department or agency.**
- There is **no sanction for failing to report**, however the Secretary of State can seek an injunction against a company for non-reporting.
- The **Home Office estimates that 9,000-11,000 companies** are covered by the requirement, however to date just over **3,000 statements have been identified** by the [Modern Slavery Registry](#). As there is no official list of companies covered by TISC, it is impossible to know which firms are required to report.
- Recent [research](#) has found that many statements are **not signed in accordance with the legislation** and do not contain information **on known risks of modern slavery** in company operations / supply chains.

¹ Partner organisations include Amnesty International UK, Anti-Slavery International, Christian Aid, Oxfam, Traidcraft and Unicef UK. Full list here <http://corporate-responsibility.org/about-core/our-network/>

Recommendations

- The government should publish a list of companies in scope of the TISC reporting requirement.
- A government agency should be tasked with receiving and addressing reports of non-compliance.
- The option for companies to report that they have taken no steps should be removed.
- Companies should be required to report on all six areas listed in s.54(5) of the Act.
- Meaningful sanctions (e.g. fines) should be introduced for non-reporting.

2. Using public procurement to promote corporate efforts to eliminate modern slavery

In 2015 the UK's public procurement market was valued at **£260 billion, 13.6% of GDP**. As such public procurement offers an enormous opportunity to promote corporate efforts to eliminate modern slavery. Public buyers have the potential to operate **substantial leverage over the conduct of their suppliers and market practices**, particularly in areas where they are the predominant customers of, for example, electronics equipment, surgical and laboratory equipment, construction materials and services, cleaning and security services.

The government should demonstrate that it is meeting the same requirements it places on the private sector, especially since **public sector supply chains can be linked to modern slavery** in the same way as those of businesses. For example:

- **Surgical instruments procured by the NHS** have in the past been linked to suppliers using child labour in backstreet workshops described as "filthy [and] dangerous".
- **The public sector buys significant volumes of apparel** (i.e. uniforms). The risk of labour rights abuse, including forced and child labour, in the garments sector is notoriously high.

Recommendations

- All public bodies meeting the turnover threshold should be required to report under TISC.
- There should be mandatory exclusions by which public buyers can reject tendering applications from suppliers who fail to uphold human rights standards in their supply chains.
- The government should develop additional practical guidance for public buyers on integrating respect for human rights into public procurement processes.

3. Beyond transparency: human rights due diligence (HRDD)

HRDD is a process to identify, prevent and mitigate adverse impacts on human rights. The concept was first outlined in 2011, in the UN Guiding Principles on Business and Human Rights. The UK is committed to implementing the Principles through its Business and Human Rights Action Plan. Several major companies including Unilever and Nestlé are carrying out HRDD.

There is now an **international trend towards the introduction of mandatory HRDD**, to create a level playing field on human rights standards. For example, France has introduced a law that places a duty on the largest firms to conduct HRDD. Similar legal options are being discussed in Switzerland, Germany and Austria, and the Dutch government is considering the introduction of a specific due diligence requirement on child labour.

In light of these developments, and looking ahead to the need to maintain high standards of corporate governance in the context of Brexit, we recommend that **all large companies operating in the UK be required to carry out human rights due diligence** on their operations and supply chains, and to **report on how they have fulfilled the requirement**.

4. Compensation for victims of modern slavery

The Modern Slavery Act **does not create a means for victims of slavery and trafficking to pursue compensation claims against perpetrators**. Instead, victims must “fit” the crimes to existing legal definitions such as ‘negligence’ or ‘trespass to the person’ in order to sue perpetrators.

While Slavery and Trafficking Reparation Orders are available, these are used only in the tiny proportion of cases where a person has been criminally convicted of an offence under the Modern Slavery Act and a confiscation order has been made. We know of no such orders made to date and the conviction rate under the Act is very low - 63 [convictions](#) since the Act came into force.

To date there has been **only one successful civil claim arising from human trafficking and forced labour brought against a UK company**, [Galdikas & others v DJ Houghton Catching Services & others](#). This case was brought by six Lithuanian men who were trafficked to work on farms by a Kent gangmaster, DJ Houghton Catching Services, and who were threatened and assaulted by supervisors during their employment. In part due to the lack of a specific compensation provision for human trafficking, the litigation was extremely complex and took two years to resolve.

Even greater challenges are faced by victims in the international supply chains of UK companies. In the United States, victims can use the U.S. Trafficked Victims Protection Act (TVPA). US courts have jurisdiction to enforce the TVPA against a company that has its headquarters or conducts business in the United States. As such, modern slavery victims of a US business supply chain have the right to pursue legal action in the US.

Under this law, the US company Signal International was found liable and forced to pay compensation to trafficked workers it deceived, indebted and abused on construction sites after Hurricane Katrina. After losing a court case under the trafficking compensation laws the company later filed for bankruptcy. This proved to be a **forewarning to other firms operating in the US** that they could face similar sanctions for trafficking harms.

Recommendations

- Introduce specific civil wrongs of trafficking, slavery, servitude and forced or compulsory labour.
- Introduce provisions akin to the U.S. Trafficked Victims Protection Act to enable victims of modern slavery in the international supply chains of UK businesses to access remedy in the UK.

5. Criminal law reform and director disqualification

Company directors found guilty of offences under the Modern Slavery Act or subject to a Court judgement in a civil claim should be disqualified and banned from acting as directors. This would

ensure accountability and prompt corporate action to tackle the problem of slavery and trafficking

Recommendations

- Introduce a new corporate offence of 'Failure to prevent modern slavery and human trafficking', akin to the failure to prevent offences in the UK Bribery Act 2010 and the Criminal Finances Act 2017 (failure to prevent tax evasion).
- The offence could be constructed to require firms to put in place a court-supervised corrective action plan to address the issues.

ENDS

For more information please contact Ayesha Carmouche, Advocacy and Communications Manager, ayesha@corporateresponsibility.org , +44 (0)203 752 5712