



INDEPENDENT REVIEW OF THE MODERN SLAVERY ACT 2015

**Joint submission from Amnesty International UK, Anti-Slavery International, Business & Human Rights Resource Centre, CORE Coalition, Fairtrade Foundation, Freedom United and ShareAction
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About

We are civil society organisations who supported, and advocated for, the introduction of s. 54 of the Modern Slavery Act. Several of our organisations are members of the Modern Slavery Registry steering committee.

This submission is based on the collective experience and expertise of CORE and our partners, including through tracking business compliance with the Act¹, undertaking analysis of company reporting², and our broader work on business and human rights issues, including providing advice to businesses on meeting their responsibility to respect human rights.³ We welcome the Independent Review and the opportunity to make a submission.

Summary and key recommendations

The UK Modern Slavery Act 2015 has raised awareness among businesses, investors, the media and the UK public about the prevalence of modern slavery in the private sector and beyond. We are of the view that the transparency requirement of the Act has some potential to spur action from businesses to address the risk factors that give rise to serious exploitation. However, corporate reporting and transparency, while important, should be understood as elements of a more comprehensive approach necessary to addressing the risks. This should include a requirement for companies to carry out due diligence throughout their supply chains and operations.

Three years on from its introduction, it is apparent that the legislation's impact is seriously limited by shortcomings in the reporting requirement, in combination with inadequate monitoring and enforcement. While we have seen some improvement over time, we would expect to see clear progress by more companies three years since the passage of the Act.

There are several worrying trends. 40% of companies have not published a statement.⁴ Many companies have published a first-year statement but have not published a second or third-year

¹ Business & Human Rights Resource Centre (2018) *Modern Slavery Registry*. Available at: <https://www.modernslaveryregistry.org/>

² CORE Coalition (2017) *Risk averse? Company reporting on raw material and sector-specific risks under the Transparency in Supply Chains clause in the UK Modern Slavery Act 2015*. Available at: http://corporate-responsibility.org/wp-content/uploads/2017/10/171003_Risk-Averse-FINAL-1.pdf

³ CORE Coalition, Anti-Slavery International, UNICEF and Business & Human Rights Resource Centre (2017) *Beyond Compliance: Effective Reporting Under the Modern Slavery Act*. Available at: http://corporate-responsibility.org/wp-content/uploads/2016/03/CSO_TISC_guidance_final_digitalversion_16.03.16.pdf

⁴ Home Office (2018) *Home Office tells business: open up on modern slavery or face further action* [press release]. Available at: <https://www.gov.uk/government/news/home-office-tells-business-open-up-on-modern-slavery-or-face-further-action>



statement as required under the Act. Some companies have rolled their statement over to the next financial year without updating it to reflect the steps that have been taken in the financial year to address modern slavery.⁵ This indicates that even companies that are complying see the obligation to provide a statement as merely a tick box exercise.

Most published statements do not meet the minimum requirements of the Act and the overall quality of reporting is poor. It seems reasonable to assume that the underlying factor is the lack of substantive action to report upon. The most comprehensive reports come from companies that had begun to address human rights, labour rights and modern slavery in their supply chains prior to the Act's introduction. These tend to be consumer-facing companies that were already subject to NGO and media scrutiny, but many companies covered by the Act do not fall into this category and have not given attention to the issues. Assessment of reports published by FTSE 100 and other companies shows only a small number of companies demonstrating meaningful action to identify and mitigate risks, with the majority publishing generic statements that provide little to no useful information. The absence of any incentive in the Act for companies to proactively identify and disclose risks is reflected in modern slavery reports. The legislation suggests six topic areas for inclusion in reports, but ultimately companies have the freedom to include and to omit content as they see fit, with many treating the reporting requirement as a mere compliance exercise.

The Independent Review provides an opportunity to take a holistic approach to developing s.54, with careful thought given to how the legislation can drive the type of corporate action that will make a difference to victims of modern slavery. We recommend that the Independent Review makes the following proposals to Government:

- Consider how to craft a reporting provision that requires companies to report principally on the effectiveness of their actions to tackle modern slavery, rather than simply reporting that action has been taken;
- Invest the resources necessary to enable proper analysis, monitoring and enforcement;
- Commission research to provide recommendations on how the public procurement process can be used to incentivise high labour rights standards in companies' operations and supply chains;
- In line with the trend across Europe, commence the process of introducing a requirement for companies to carry out human rights due diligence throughout their operations and supply chains.

1) How to drive compliance

- a. **Should the Home Secretary be required to publish a list of businesses which are in scope of the Act?**

⁵ According to analysis of statements in the *Modern Slavery Registry (2018)*. Available at: <https://www.modernslaveryregistry.org/>



Yes. Publication of the list of businesses in the scope of the Act is vital to drive and to enable effective monitoring of compliance. The absence of a list makes it almost impossible to establish which companies are in scope of the legislation, preventing interested parties from raising questions with non-compliant companies about their failure to report. A public list would make this much more straightforward and is therefore highly likely to lead to an increase in reporting.

b. Should the government create a central repository for organisations to upload their statements on? If yes where should that repository lie?

Yes. Organisations should be required to upload their statements annually to a government run central repository. Such a facility would allow other investors, consumers, non-governmental organisations, trade unions and contracting companies or local authorities to quickly and easily identify whether a company has complied with the Act, and to assess the extent to which they are taking action to address the risks of modern slavery in their business.

When companies submit their statements to the government registry, they should be required to certify that the statement meets the legal requirements, and the statement itself should include wording to indicate that it has been approved by the board, with a signature and name of an appropriate director-level individual. Companies should also be encouraged to provide supporting documentation, so that civil society, government, and the public can assess the credibility of reports.

The operation and maintenance of the repository could be placed within the scope of the Office of the Independent Anti-Slavery Commissioner (IASC), on condition that the IASC is provided with the resources required to maintain the repository.

c. Should the Government consider using enforcement powers within the Act or are there other means or bodies to drive enforcement?

In the three years since the Act's introduction, the government has been reluctant to use the enforcement powers available under the Act. Home Office Parliamentary Under-Secretary Victoria Atkins MP has said that 'the legislation was designed to harness pressure from civil society, consumers and investors rather than set up a burdensome system of Government monitoring'.⁶ While this ambition undoubtedly has been hampered by the absence of a list of companies in scope, even if such a list were available, it is likely that some companies would still fail to report and would not respond to third-party pressure to do so. In these cases, the government must be prepared to use the enforcement powers available to it.

The approach to compliance and enforcement around the Gender Pay Gap reporting regime provides an instructive comparison. Prior to the reporting deadline for companies, the Equality and Human Rights Commission (EHRC) made a concerted effort to alert businesses to the reporting deadline, and to emphasise that compliance was being monitored, and that enforcement measures

⁶ *Parliamentary business: Procurement: Written question - 124411* (2018). Available at: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-01-23/124411/>



(potentially including an unlimited fine) would be taken against non-compliant companies. The Government also established a registry to which companies are required to submit their reports. On 1 August 2018, the government announced 100% employer compliance with the Gender Pay Gap reporting requirement.⁷

The government could draw on the success of this model to mandate the IASC to identify and compile lists of non-compliant companies that the government could then take to court. These enforcement powers should also be used in respect of companies that fail to comply with the minimum legal requirements of publishing a statement that has been approved by the board (or equivalent), signed by a director (or equivalent) and is clearly linked to, from the homepage of the company's website.

d. Is legislative change required? Are there non-legislative measures which could make a real difference in driving compliance?

We consider financial penalties for non-compliant entities to be a critical element of an effective reporting requirement. The absence of financial penalties in the UK Modern Slavery Act represents a significant legislative weakness and has resulted in high rates of non-reporting.

We recommend that the Independent Review proposes the introduction of financial penalties where entities:

- Fail to publish a modern slavery statement;
- Publish a statement that does not meet the minimum requirements of being signed and approved by the appropriate person(s) and provide a link to the statement on the company website homepage;
- Publish statements that omit prescribed information.

The legislation should also *require* (rather than suggest) that companies include information on clearly defined reporting criteria, including their human rights due diligence process (see responses to questions under point 2 for more detail). These requirements would preclude companies from reporting they had taken no steps to address modern slavery, as is currently allowed under the Act. It would also help level the playing field by requiring all companies to report against the same set of standards.

Analysis of modern slavery reports indicates that the better performing companies are those whose reporting demonstrates they have undertaken human rights due diligence. They have better visibility over supply chains, more comprehensive monitoring and assessment of suppliers, and a clear understanding of risks. However, these tend to be consumer-facing companies that are subject to broader public scrutiny. Most companies that are required to report under the Act will not be

⁷ Government Equalities Office and The Rt Hon Penny Mordaunt MP (2018) *100% of employers publish gender pay gap data* [press release]. Available at: <https://www.gov.uk/government/news/100-of-uk-employers-publish-gender-pay-gap-data>



subject to such pressure, and therefore, may not put in the same effort unless legally required to do so.⁸

To address this, and in line with a clear trend across Europe, the Government should begin the process of introducing legislation to require companies to undertake human rights due diligence as described in the UN Guiding Principles on Business and Human Rights (UNGPs).

2. How to improve quality

a. How can companies be encouraged to improve the quality of modern slavery statements?

The generally low quality of statements reflects the current low level of corporate action to address modern slavery. Ultimately, the quality of statements will improve only when companies take effective action to tackle modern slavery. In the absence of companies taking this action voluntarily, they should be mandated to do so (see answer to 1d above).

In the shorter term, recasting the reporting requirement towards a focus on the effectiveness of the measures taken (see point b. below), combined with the steps outlined above to improve compliance and strengthen monitoring and enforcement, would lead to some improvements in quality.

More analyses of company reporting would maintain a focus on the corporate response to the Act. At present, few organisations are undertaking analysis of reports. Government could provide funding to support organisations to undertake this analysis and use the findings to produce guidance and recommendations for companies, particularly sector-specific materials.

b. Should reporting be mandated on particular areas? Which areas should be considered?

The Government should require companies to include information on a set of clearly defined reporting criteria. Given that this would require legislative change, we recommend that careful consideration is given to crafting the reporting requirement with a view to incentivising action. While altering the wording of s.54(5) to require the inclusion in statements of information on the six listed topics appears to provide an immediate and straightforward solution, it would not necessarily drive a comprehensive approach in businesses to tackle the problem.

Recent research suggests that rather than simply requiring a description of actions taken, reporting requirements should evolve towards a focus on assessing the *effectiveness* of corporate actions. The Act could provide a set of indicators for companies to report on, enabling comparison across different companies and industries, and comparison across time in the same company to measure for improvements. These indicators could include:

⁸ Business & Human Rights Resource Centre (2017) *First Year of FTSE 100 Reports Under the UK Modern Slavery Act*. Available at: <https://www.business-humanrights.org/sites/default/files/FTSE%20100%20Report%20FINAL%20%28002%291Dec2017.pdf>



- the patterns, prevalence, and risks of forced labour within supply chains, including the most relevant indicators of forced labour in the company's sector and industry;
- a requirement to specifying which portions of the supply chain are most at risk, which segments of the workforce are most vulnerable, and where efforts to tackle these issues are focused;
- the effectiveness of the actions taken to address these risks.⁹

3. Wider regulatory environment: How can companies better ensure internal compliance with the requirements of the Act?

- **How does the legislation fit with the wider government regulatory environment on corporate compliance?**

There are several independent entities mandated by government and based in central government departments whose remit encapsulates elements of responsible business conduct and corporate reporting on human rights. These include: the Director of Labour Market Enforcement; the Groceries Code Adjudicator; the UK National Contact Point for the OECD guidelines for multinational enterprises; and the Financial Reporting Council. There is significant potential for greater collaboration between these bodies and the IASC. We recommend that the Independent Review advises the government to consider how this collaboration could be fostered to encourage more effective corporate engagement to address the risk factors that contribute to modern slavery.

4. Public procurement:

a. How should public bodies address supply chain transparency?

Public procurement is powerful tool at the disposal of the UK Government to incentive businesses to take action to address the risks of modern slavery in their operations and supply chains. Currently, bidders for public contracts can be excluded on the basis of specific convictions under the Public Contracts Regulations 2015 or offenses listed under the Modern Slavery Act. However, this limits incentives to identify and act upon labour rights abuses that could occur in government supply chains throughout the course of the contract, and limits incentives for companies bidding for contracts to implement holistic transparency measures. Public bodies should address supply chain transparency through taking a holistic view of human rights and embedding of due diligence into their policies and practices throughout the performance of public contracts, rather than just at the contracting stage.

Currently, buyers have the option to exclude companies from bidding for public contracts on the grounds that they have failed to prepare and publish a modern slavery statement. We recommend

⁹ Bloomfield, M. and LeBaron, G. (2018) *The UK Modern Slavery Act: Transparency Through Disclosure in Global Governance*. Available at: <https://www.e-ir.info/2018/09/21/the-uk-modern-slavery-act-transparency-through-disclosure-in-global-governance/>



that this provision is strengthened and that any business which falls within the scope of Section 54 but which has failed to comply with its requirements is excluded from bidding for public contracts.

The government has set a target for 33% of procurement spend to reach SMEs by 2020, either directly or via another larger contractor through its supply chain. One element of the government's definition of an SME is turnover less or equal to £39 million. This suggests that a significant proportion of companies being awarded government contracts are likely to fall below the £36 million threshold for reporting under the Modern Slavery Act. Section 54 should therefore be revised to require all entities bidding for public contracts to publish a modern slavery statement, irrespective of turnover.

b. Should Section 54 be extended to the public sector?

Last year, the Joint Committee on Human Rights recommended that the government incorporate human rights into public procurement, stating that "if the Government expects businesses to take human rights issues in their supply chains seriously, it must demonstrate at least the same level of commitment in its own procurement supply chains."¹⁰ Public bodies, including central Government departments, with an operating budget over £36 million should be required to investigate their operations and supply chains, and publish an annual statement. Many NHS Trusts and local authorities have already done this. The process of preparing a statement has the potential to promote responsible procurement practices because it encourages the tendering authority to map its supply chain beyond tier one suppliers, and to identify and address the risk factors that contribute to slavery.

5. Best practice: Are there lessons which can be learnt from international partners in this area?

The proposed Modern Slavery Act in Australia is likely to be passed by Parliament before the end of this year. That legislation proposes that companies be required to report on a set of specific criteria.

In California, the Attorney General has undertaken two mass mailings to approximately 2,400 companies that are required to report under the California Transparency in Supply Chains Act.

There is a clear emerging trend across Europe towards the introduction of legislation requiring companies to conduct human rights due diligence on their subsidiaries and supply chains. The 2017 French 'Duty of Vigilance' law requires large companies to develop, implement and report on human rights due diligence plans to identify and address human rights risks, which would include forced and child labour. In response to a campaign for a referendum on a constitutional amendment to require companies to respect human rights, the Swiss parliament has brought forward a proposal for a series of legislation to require large companies and those engaged in designated high-risk activities to undertake appropriate due diligence. The German Government has made a commitment to introduce mandatory due diligence if by 2020 fewer than 50% of large German companies are

¹⁰ Joint Committee on Human Rights (2017) *Human Rights and Business 2017: Promoting responsibility and ensuring accountability*. Available at: https://publications.parliament.uk/pa/jt201617/jtselect/jtrightts/443/44307.htm#_idTextAnchor036



conducting human rights due diligence voluntarily. Earlier this year a report commissioned by the Swedish Minister for Trade recommended that the government consider introducing binding human rights due diligence requirements for Swedish companies.¹¹

END

For more information about any aspect of this submission, please contact Louise Eldridge: louise@corporate-responsibility.org.

¹¹ For more information about these developments see *Business and Human Rights in Law* (2018). Available at: <http://www.bhrinlaw.org/key-developments>