

Government publishes MSA review response and associated consultation

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24 July 2019

The Government has recently published a [Consultation](#) on proposed measures to strengthen the transparency in supply chain provisions in section 54 of the Modern Slavery Act 2015 (MSA). The Consultation is published alongside the Government's [Response](#) to the Final Report of the independent review of the MSA (see our previous update on this [here](#)). The Independent Review made a total of 80 recommendations – 21 of which specifically related to the transparency in supply chains statement requirements of section 54.

The Government notes that *"in the years since it came into force, the UK's landmark transparency in supply chains legislation (the MSA) has been a crucial part of our commitment to end modern slavery by 2020."* Yet it also acknowledges that there is still more work to do.

Key themes coming out of the Consultation and the Government's response include the following:

Content of MSA statements

The Government recognises that whilst the efforts of responsible businesses should be recognised, few organisations go beyond minimum compliance requirements each year. In order to improve the quality of statements, it is considering making reporting against each of the six areas listed in section 54(5) mandatory, and seeks views on how to balance this requirement against competing risks. The Government also aims to introduce legislative changes in order to harmonise the UK's approach to reporting with those of other countries, which will hopefully save time for multinational organisations who have to report in different jurisdictions.

Transparency, compliance and enforcement

The Government will be developing an online registry for modern slavery statements available to organisations free of charge (the Prime Minister announced this in June 2019), and in parallel will make legislative amendments to mandate publication on this registry (as well as on an organisation's website if they have one). The Government is also considering how they could incorporate indicators of reporting quality into the registry and have said that they will take into account the lessons learned from Gender Pay Gap reporting.

In order to make tracking progress year on year easier, the Government intends to introduce a single reporting deadline on which all organisations must publish their statement each year. This was not something that the Independent Review had recommended – the Review said that reporting deadlines should remain aligned to an organisation's financial year end. The Government is consulting on possible dates of 31 March, 30 September, 31 December, 30 June or 30 March for public sector organisations and 4 April for other types of organisation (in alignment with Gender Pay Gap reporting deadlines) – or respondents to the consultation are welcome to suggest another appropriate date.

The Government rejected the following recommendations from the Independent Review that:

- The Companies Act 2006 (CA 2006) should be amended to require companies to refer to their modern slavery statement in their annual reports, and that s 54 2015 Act should be amended to impose a similar duty on non-listed companies that meet the relevant size threshold but would not be captured by CA 2006 reporting requirements;

- Organisations should designate a board member to be accountable for production of their modern slavery statement – as “the Board’s role in approving a modern slavery statement is a collective responsibility”; and
- The failure to fulfil modern slavery statement reporting requirements, or to act when instances of slavery are found, should be an offence under the Company Directors Disqualification Act 1986.

The Government is seeking views on how it can improve its approach to non-compliance and appropriate timeframes for enforcing compliance. The Government agrees that the introduction of any new enforcement measures would need to be “gradual, consistent with growing business awareness and the Government’s continuing efforts to encourage this... [and]... that any new enforcement sanctions are proportionate and support the overall aim that organisations will take effective action to prevent and tackle modern slavery in their business and supply chains and report this activity in a transparent way.”

Public sector supply chains

The Government commented that the “public sector has a crucial role to play in harnessing its huge spending power to help eradicate modern slavery from the global economy” and noted that the Independent Review set out “a compelling case for the Government to step up its ambition and strengthen the transparency in supply chains provision of the Act.” It was also noted that over 100 local authorities, as well as many police forces and NHS bodies, have already voluntarily published their own statements.

The Government therefore proposes that the requirement to publish a modern slavery statement be extended to public sector bodies which have an annual budget of £36 million or more that are not currently caught by existing legislation. The idea is that the proposed approach to public sector reporting mirrors the current private sector transparency requirements as closely as possible.

Public bodies will be those which exercise functions of a public nature or who are providing, under contract with a public authority, any service whose provision is a function of that authority - such as those covered by the Office for National Statistics Public Sector Classification Guide or those defined as public bodies in the Freedom of Information Act. This would include Central Government Departments and their Arm’s Length Bodies (ALBs), local government bodies, including Combined Authorities, NHS bodies, police forces, and non-market and market public bodies (such as public corporations), which meet the budget threshold.

The Government considers that the same flexibility for group reporting currently available to private sector organisations required to report should be extended to public sector organisations – for example, Government departments would be allowed to choose to publish a group statement covering their Non-Departmental Public Bodies, ALBs, Trading Funds and Executive Agencies.

Further detail on the UK Government’s work to address modern slavery risks in its own supply chains will be set out in a voluntary statement covering central UK Government departments due to be published later this year. The Government has also committed that from 2020/21 onwards individual ministerial departments will publish their own individual annual modern slavery statements.

The Independent Review also recommended that Crown Commercial Service should keep a database with details of compliance checks and due diligence on public contractors that is easily accessible to public authorities for use during the procurement process. Ahead of the creation of the central registry for modern slavery statements (see above), the Government has already taken steps to support public authorities to undertake and share due diligence on contractors – launching the Modern Slavery Assessment Tool earlier this year which, amongst other things, allows public sector organisations to ask suppliers questions about the processes they have in place for managing modern slavery risks and provides tailored recommendations on how to improve their anti-slavery processes. The Government believes this tool meets the requirements of the Independent Review’s recommendation.

The Independent Review also recommended that the UK Government strengthen its public procurement processes to exclude companies which are non-compliant with section 54 from bidding for public contracts. It is noted that the Public Contracts Regulations 2015 already allow public sector organisations to exclude non-compliant bidders from the tender process where they have anticipated this in their procurement documents and they consider exclusion to be appropriate. Crown Commercial Service has used this discretionary power to exclude bidders that were non-compliant with section 54. It is further noted that the creation of a central registry of statements will make it easier for public sector organisations to access the information they need to exercise this discretion.

The Government notes that following the consultation, they will make the necessary legislative changes to implement these amendments “as soon as Parliamentary time allows” – although time will tell how quickly this will be in view of Brexit developments.

The Government has also published a [Press Release](#) announcing the launch of a Policy and Evidence Centre for Modern Slavery and Human Rights - which will be a hub for sharing knowledge, advancing new studies and promoting collaboration with other countries.

Proposed changes to the statutory guidance

The Government made a number of comments about enhancements and updates to the statutory guidance on transparency in supply chains. It is committed to revising the statutory guidance in 2020 following the consultation and in line with any subsequent amendments to the legislation. The Government also states that the statutory guidance will be strengthened to include a template of the information organisations in scope of section 54 reporting requirements are expected to provide and will encourage organisations to include details of the specific due diligence steps they intend to take in future, as well as the steps they have taken in the previous financial year.

The Independent Review also recommended that Government should amend the MSA to require organisations to consider the entirety of their supply chains. However, the Government recognises that the process of mapping complex and far reaching supply chains is challenging. The legislation as it stands does not impose a limit on how far down their supply chain an organisation should look and in future updates to the statutory guidance the Government will make clear the need for organisations to strengthen their human rights due diligence activities beyond their first and second tier suppliers over time as part of a risk-based approach.

The Consultation closes on 17 September 2019 – and it is clear from the response to date that action will be taken by the Government to strengthen the UK’s MSA regime. However, large organisations may be able to take comfort from the Government’s comment that they *“recognise that the maturity of different organisations’ approach to addressing their modern slavery risks varies considerably. Therefore, we also want to ensure a proportionate approach to enforcement and compliance.”* There is also an acknowledgement of the desirability of harmonising the requirements of the UK’s legislative framework with those of other jurisdictions – the Government noted that *“aligning the areas on which organisations are required to report with reporting requirements in other jurisdictions could minimise the time spent by multinational organisations meeting different reporting requirements and maximise time spent on action.”*

So, watch this space...

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