

Final Report on review of the Modern Slavery Act 2015 laid in Parliament

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On 22 May 2019 the [Final Report](#) of the independent review of the Modern Slavery Act 2015 (MSA) was laid in Parliament. The review was launched last summer – and looked into the effectiveness (so far) of certain aspects of the MSA.

One of the provisions reviewed was section 54. Section 54 requires large commercial organisations (with a turnover of more than £36 million) supplying goods or services and carrying on a business in the UK to publish a slavery and human trafficking statement (Statement) in respect of each financial year. This Statement must state the steps the organisation has taken to ensure that slavery and human trafficking is not taking place in its business or supply chains – or the organisation can simply report that it has taken no such steps.

As we expected (based on the previous interim reports), the Final Report notes that the MSA currently lacks detail - and only suggesting areas to be reported on in the Statement (rather than making them compulsory) means that reporting practices are inconsistent.

It is acknowledged that the MSA has played a part in moving slavery and human trafficking issues further up the boardroom agenda – and has also improved awareness of possible instances of slavery in organisational supply chains. However, an estimated 40% of in-scope organisations are still failing to comply with the MSA's requirements. The Final Report includes a list of recommendations for reform (80 in total) – aimed at enhancing compliance, creating greater accountability and improving the quality of Statements.

The recommendations of interest to large organisations very much follow those set out in the interim reports and include the following:

- The government should establish an internal list of in-scope businesses – this would assist with naming and shaming non-compliant organisations (as they do with the national minimum wage for example). However, organisations would remain responsible for determining if they need to produce a Statement and non-inclusion on the list would be no excuse for non-compliance
- The MSA should be amended so that in-scope organisations can no longer publish a statement saying they have taken no steps to address modern slavery and still be compliant
- Making it a requirement that an in-scope business reports under the 6 categories set out in s54(5) of the MSA – at the moment these are just suggested areas that a business is expected to include (e.g. covering the organisation's structure, business and supply chains, policies relating to slavery and human trafficking, due diligence processes regarding modern slavery and training given to staff etc.)
- The statutory guidance should be strengthened to include a template of the information organisations are expected to provide on each of these 6 areas and should also make clear that reporting should include not only how businesses have carried out due diligence to prevent modern slavery in their supply chains but also the steps they intend to take in the future
- Statements should be dated and clearly state which financial year they relate to
- The government should establish a central statement repository – which should be easily accessible to the public free of charge
- The Independent Anti-Slavery Commissioner should monitor transparency and compliance (and report annually)
- The MSA should be amended to require organisations to consider the entirety of their supply chains in respect of modern slavery

- There should be a more robust approach to dealing with non-compliance with section 54 – including the introduction of an enforcement body (funded by fines levied for non-compliance) and a gradual approach to the introduction of initial warnings, fines (as a percentage of turnover), court summons and directors' disqualification. The Final Report clearly recommends *“putting teeth into this part of the [MSA] so that all businesses take seriously their responsibilities to check their supply chains.”* The Final Report also recommends that failure to fulfil MSA reporting requirements or to act when instances of slavery are found should be an offence under the Company Directors Disqualification Act 1986
- The requirements of section 54 should be extended to include the public sector (if their annual budget exceeds £36 million) and the government should also strengthen its public procurement processes to make sure that non-compliant businesses in scope of section 54 are not eligible for public contracts. The Crown Commercial Service should also keep a database of public contractors and details of compliance checks and due diligence on all relevant aspects of corporate governance carried out by public authorities. The database should be easily accessible to public authorities for use during the procurement process
- Embedding modern slavery reporting into business culture – by amending the Companies Act 2006 so that in-scope companies have to refer to their Statement in their annual reports
- Requiring in-scope companies to have a named, designated board member personally accountable for the production of the Statement

The government will now consider these recommendations and formally respond in due course. As we have previously noted, even in the current political climate, a tougher approach to slavery and human trafficking compliance is likely to be an issue upon which all sides of government find common ground – which could mean reform is on the cards sooner rather than later. In fact, the Report specifically 'urges the government to consider and act quickly and effectively upon the recommendations'.

In parallel to this, we are now also entering a new MSA reporting phase as the Home Office carries out its first ever MSA compliance audit – carrying out an audit of Statements from 31 March 2019. The Home Office has already written directly to 17,000 businesses they believe are obliged to report under the MSA warning that continued non-compliance will not be tolerated – and indicating that failure to open up about modern slavery in their supply chains may run the risk of being named as being in breach of the law.

At present, the threat of naming and shaming non-compliant organisations (and the associated detrimental media coverage and reputational damage) is the only real penalty for non-compliance – the government is technically able to seek an injunction (failure to comply with which could lead to a significant fine) but as yet no legal action has been taken.

It is understood that the 'audit' will be a largely desk-based check, looking at whether in-scope organisations have complied with the minimal legal requirements e.g. published a Statement for the relevant financial year on their website with a prominent link from the homepage, which has been approved by the board and signed by a director. It will be left to the media, NGOs, charities and others to judge on the detailed content of Statements and whether an organisation is perceived to be doing enough to tackle modern slavery.

So, what should large organisations now be doing to ensure compliance? First, check your statement is up to date – has it been published within 6 months of the relevant financial year end? Has the statement been approved by the board (and is the date of approval by the board clearly visible on the statement)? Has the Statement been signed by a director? Is there a link to the Statement from a prominent place on your homepage? It should be noted that an organisation's prior Statements should remain accessible on its website - to enable stakeholders and the wider public to track progress year on year. Finally, consider the content of your next Statement in light of the recommendations for reform – your next Statement could be under more intense scrutiny than ever before.

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