

UK modern slavery review final report issued – ‘time for the Government to take tougher action’

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Introduction

Recently the UK government (through the Home Office) issued its “Independent Review of the Modern Slavery Act 2015: Final Report”, which can be found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803554/Independent_review_of_the_Modern_Slavery_Act_-_final_report_print_.pdf. This article sets out the highlights of the report’s recommendations concerning compliance.

What is UK modern slavery compliance all about?

Under the UK Modern Slavery Act 2015 compliance disclosure/transparency requirements (Section 54), an organization with UK £36 million turnover that sells goods or services in the UK is required to annually publish a modern slavery statement (slavery statement) demonstrating what it is doing to ensure that there is no slavery or human trafficking in the business or the supply-chain (covering six recommended areas); this also applies to organizations based outside the UK selling goods and services into the UK. As the UK’s official guidance on the disclosure requirements states, organizations must “paint a detailed picture” of all the steps that they have taken. This compliance obligation has now been in force since 29 October 2015 and many organizations who fall under it have already previously published their slavery statements in the last few years.

Those organizations whose financial end-of-year was December 2018 and who meet the criteria to publish a slavery statement are required to publish one to cover the period of January-December 2018, which they should issue by the end of June 2019 at the latest. If this is a slavery statement following on from any previous one(s) it/they will have to show progress on the previous one(s).

Last autumn the UK government updated its official guidance on transparency in supply chains (the guidance), which can be found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/649906/Transparency_in_Supply_Chains_A_Practical_Guide_2017.pdf

There is also an on-going Parliamentary process to amend the UK Modern Slavery Act 2015 with a view to giving modern slavery compliance enforcement more teeth, which we have written about here: <http://www.corderycompliance.com/update-on-proposal-to-amend-modern-slavery-act-2015/>

What does the final report say?

In addition to the above-mentioned on-going legislative process to amend the Modern Slavery Act 2015, the UK Government set up an independent review of the legislation and the reviewers recently issued their final report – the highlights of the final report’s recommendations concerning the Section 54 disclosure/transparency requirements are as follows (which can be found in full on pages 39-47 of the report):

- Scope clarification – the Government should establish an internal list of companies in scope of Section 54 and check with companies whether they are covered by the legislation; non-inclusion in the list should not be an excuse for noncompliance, i.e. individual companies should remain responsible for determining if they need to produce a slavery statement;
- No steps taken abolition – Section 54(4)(b), which allows companies to report they have taken no steps to address modern slavery in their supply chains, should be removed;
- Mandatory coverage areas – in section 54(5) ‘may’ should be changed to ‘must’ or ‘shall’, with the effect that the six areas set out as areas that an organization’s slavery statement may cover will become mandatory. If a company determines that one of the headings is not applicable to their business, it should

be required to explain why;

- Coverage areas template – the guidance should be strengthened to include a template of the information organizations are expected to provide on each of the six areas that a slavery statement (currently) may cover;
- Future steps inclusion – the UK government official guidance should 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 that they intend to take in the future;
- Supply chain coverage – the legislation should be amended to require companies to consider the entirety of their supply chains in respect of modern slavery. If a company has not done so, it should be required to explain why it has not and what steps it is going to take in the future;
- Annual financial reports coverage – the Companies Act 2006 should be amended to include a requirement for companies to refer in their annual reports to their slavery statement. Section 54 should be amended to impose a similar duty on non-listed companies that meet the £36 million threshold but would not be captured by the Companies Act 2006 reporting requirements;
- Board member responsibility – businesses should be required to have a named, designated board member who is personally accountable for the production of the slavery statement;
- Compliance failure criminalization – failure to fulfil slavery statement reporting requirements or to act when instances of slavery are found should be an offence under the Company Directors Disqualification Act 1986;
- Government statement repository – there should be a central government-run repository where companies are required to upload their slavery statements, which should be easily accessible to the public and free of charge;
- Compliance role for Commissioner – the ‘Independent Anti-Slavery Commissioner’ should monitor businesses’ compliance with the Section 54 compliance disclosure/transparency requirements;
- Further sanctions over time – the Government should make the necessary legislative provisions to strengthen its approach to tackling non-compliance (with Section 54), adopting a gradual approach of initial warnings, fines (as a percentage of turnover), court summons and directors’ disqualification. Sanctions should be introduced gradually over the next few years so as to give companies time to adapt to changes in the legislative requirements;
- New enforcement body – the Government should bring forward proposals to set up or assign an enforcement body to impose sanctions on non-compliant companies that fail to publish a slavery statement; fines levied for non-compliance could be used to fund the enforcement body; and,
- Procurement ban – the Government should strengthen its public procurement processes to make sure that non-compliant companies in scope of Section 54 are not eligible for public contracts.

Takeaways

In the UK there are clearly moves afoot to strengthen the compliance disclosure/transparency obligation notably concerning enforcement. This is a pattern that started last autumn when the UK Government also wrote to a large number of businesses complaining about their non-compliance which it said it would follow-up by publishing a list of non-compliant companies, which we have written about this here: <http://www.corderycompliance.com/uk-government-warning-and-annual-slavery-report/>. Modern slavery compliance is also becoming a more global issue with Australia being the most recent place to have in place such legislation (see here for this: <https://www.legislation.gov.au/Details/C2018A00153>).

Businesses should therefore take stock and ensure that they have solid and defensible modern slavery practices in place. The two starting-points here are to have in place a modern slavery policy and to undertake training – in particular, employees and suppliers need to know how to spot the signs that modern slavery may be taking place, which we have made a short film about that can be found here: <http://www.corderycompliance.com/spotting-the-signs-of-modern-slavery/>

For other articles that we have written about modern slavery compliance please see here: <http://www.corderycompliance.com/category/modern-slavery/>; we have also written about modern slavery and Brexit here: <http://www.corderycompliance.com/brexit-and-modern-slavery-compliance-2/>

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