

Client Alert: Government response to UK Parliamentary Enquiry relating to Xinjiang Supply Chains

Date : June 18, 2021

Introduction

The UK Parliament's Business, Energy and Industrial Strategy (BEIS) Committee, recently published the Government's response to the BEIS Committee's report on allegations relating to Uyghur forced labour in Xinjiang, China and supply chain accountability more generally. We looked at the background to this Parliamentary Enquiry here in our alert here <https://bit.ly/parlchina>.

What did the Government say?

The Government seems broadly supportive of the sentiments behind the Parliamentary Report but refuses to commit to clear timeframes and substantive actions.

The Government's response says that it is committed to taking action and that will include:

1. Using the sanctions regime "*to hold to account those involved in serious human rights violations and abuses*".
2. Strengthening guidance to make the risks to UK businesses investing in or with supply chains in XUAR clearer. New guidance was published on 12 January 2021. There have been a number of meetings since involving various Government Ministers with the promise of more meetings to come.
3. Reviewing export control measures to consider a prohibition on goods which may contribute to human rights violations in Xinjiang. The Department of International Trade (DIT) will lead on this exercise and will report back to Parliament.
4. The introduction of financial penalties for organisations who fail to meet transparency obligations of the Modern Slavery Act 2015. The Government has said that this requires legislative change but that it will amend the law "*as soon as Parliamentary time allows*".
5. Increasing support for UK Government bodies to use public procurement rules to exclude suppliers. The Government says that this initiative started on 12 January 2021. The new measures include a minimum weighting of 10% of the total score for social value including reducing modern slavery risks.
6. The launch of the online Modern Slavery Registry. We've written about the Registry here and the Government's response to our FOI request about the filings which have been made <https://bit.ly/slaveryfoi>. The Government's response says that the Registry "*will radically enhance transparency by enabling investors, consumers and civil society to scrutinise the action different organisations are taking to prevent modern slavery and monitor progress over time. The Registry will be a key tool for Government to monitor and drive compliance with the [Modern Slavery Act 2015]*". The Government has repeated its intention that registering will become mandatory for many organisations.
7. The Government says that it has rejected a number of measures suggested by the BEIS Committee including:
 1. Use of Company Director Disqualification legislation to bar directors from holding office. The Government says that the requirement in the Modern Slavery Act 2015 for statements to be approved at board level and signed by a director is already sufficient to emphasise that "*the board should have collective responsibility for modern slavery transparency*".
 2. The Government in its response also references a consultation exercise in auditing, company reporting and corporate governance which will take these concerns into account.
 3. Asking the Government to consider "*whitelists*" and "*blacklists*". The Government says it is not possible for Government to verify the supply chains of organisations to decide who should be on which list.

What has the response been from the Parliamentary Committee?

The Parliamentary Committee said that it was disappointed in the Government's response. Nusrat Ghani MP, the lead committee member for the enquiry said that she would still pursue matters including "*pushing for a Uyghur genocide Government Procurement Black List*".

In a letter from the Chair of the BEIS Committee, Darren Jones MP and Nusrat Ghani MP, the BEIS Committee said that it was "*disheartening in the extreme*" to see the Government's response particularly in light of the further developments that had taken place since the report was issued including the sanctioning by China of Nusrat Ghani, most likely for her role in producing the report. The letter is very strongly worded in places - particularly when seen against established Parliamentary standards – for example elsewhere in the response the BEIS Committee says that evidence from the Minister relating to revised guidance "*stretches the bounds of credulity*" As another example, on one point relating to supply chain auditing, the Government's response is described as "*simply ludicrous*". This is not a party political response. Whilst the Chair is a Labour MP, Ms Ghani was until February last year, a Minister in Boris Johnson's Government.

The BEIS Committee asked the Government to keep sanctions under review and to expand them where necessary.

The BEIS Committee has asked for a response to its concerns by 23 June 2021.

What happens next?

Whilst it seems as a result of the Government's response that new legislation is not imminent, organisations should not be complacent about their supply chains.

Firstly, the Government has sent more than 15,000 letters to organisation in connection with the Government's new modern slavery compliance register. You can find out more about that here <https://bit.ly/slaveryfoi>.

We have also see that ESG and supply chain due diligence has been a focus in other countries including Australia, France, Germany and The Netherlands. There are moves for new legislation at an EU level too. There is more analysis on that here <https://www.corderycompliance.com/esg-supply-chain-dd-legal-trends/>

We are also seeing litigation start from organisations concerned about supply chain compliance. For example, in the UK, litigation has been threatened against at least one company over allegations that it has employees from XUAR in its supply chain. In France, complaints have been brought against a number of multi-national companies in the fashion industry alleging the use of Uyghur forced labour. You can find out more about that here <https://www.corderycompliance.com/esg-supply-chain-dd-legal-trends/>

What are the takeaways?

To try and reduce their risks organisations will need to consider:

1. Putting in place appropriate due diligence and risk management processes, procedures and policies. Look at building this in to holistic ESG and procurement processes;
2. Training staff to deal with these issues;
3. Being alert to pressure group activity. Some pressure groups, NGOs and universities are compiling target lists of organisations who they say are not taking these issues seriously. No business wants to appear on these lists and as a result it is important to escalate these requests quickly and deal with them appropriately. This is likely to need training for your social media people too;
4. Being alert to possible customs and export control issues both at an EU level and at a UK level. Again make sure that your suppliers and sales channels are clear that you expect total honesty on the origin and destination of goods;
5. Carefully examine any claims you make or your sales channel make about ethical conduct, the origin of products etc. since some of the litigation is likely to be based on allegations of false claims. It is important to

remember that in many cases the burden of proof is on the organisation making the claim and so proper, documented evidence should be obtained of any claim before it is made;

6. Get the Board on board; and

7. Keep track of draft legislation and plan resources accordingly to be able to implement requirements when the various new rules come into force.

For more Information

Cordery's Modern Slavery Action service helps organisations with their compliance in this area. There is more information here <https://www.corderycompliance.com/solutions/modern-slavery-action/>

You can find more materials about modern slavery including a review of the impact of Brexit on modern slavery law here <https://www.corderycompliance.com/category/modern-slavery-supply-chain-management/>

[You can find out more about the Government reply and Parliament's response at www.bit.ly/govtupply.](http://www.bit.ly/govtupply)

For more information please contact Jonathan Armstrong or André Bywater who are lawyers with Cordery in London where their focus is on compliance issues.

[Jonathan Armstrong](#), Cordery, Lexis House, 30 Farringdon Street, London, EC4A 4HH
Office: +44 (0)207 075 1784
Jonathan.armstrong@corderycompliance.com



[André Bywater](#), Cordery, Lexis House, 30 Farringdon Street, London, EC4A 4HH
Office: +44 (0)207 075 1785
Andre.bywater@corderycompliance.com

Farringdon

