

Modern Slavery Act 2015 – latest developments

Momentum is gathering in the call to take a tougher approach to how large businesses tackle modern slavery issues in their supply chains.

06 February 2019

Momentum is gathering in the call to take a tougher approach to how large businesses tackle modern slavery issues in their supply chains.

We have previously reported on Private Members' Bills that have been put forward to enhance the current reporting requirements under section 54 of the Modern Slavery Act 2015 (MSA) and to give this regime more teeth – now the Home Office has published its [Second Interim Report](#) from the independent review of the MSA, which also suggests the current legislation should be strengthened.

The [First Interim Report](#) was published in December and focussed on the role of the Anti-Slavery Commissioner. The Second Interim Report (Report) is of greater direct relevance to large businesses, as it specifically considers the transparency in supply chains requirements of the MSA and how they have been complied with (or not) to date.

Section 54 of the MSA requires a commercial organisation supplying goods or services in the UK and having a total turnover of £36 million a year or more to publish a slavery and human trafficking statement (Statement) for each financial year setting out the steps it has taken during that financial year to ensure that slavery and human trafficking is not taking place in any part of its own business or its supply chains (or issue a statement that it has taken no such steps).

The Report comments that the impact of section 54 has, so far, been limited – highlighting that the lack of enforcement and monetary penalties have played a part in shaping the attitude of businesses towards their compliance with section 54. This was a trend that we picked up on last year during our roundtable with Baroness Young of Hornsey (a Crossbencher in the House of Lords and campaigner against Modern Slavery) and Dr Alexander Trautrim (Lecturer in Supply Chain and Operations Management at Nottingham University Business School) – which can be viewed [here](#).

The Report highlights the following general issues with the current legislative regime:

- It is unclear which businesses need to comply with section 54 – for example, due to the fact that the requirements are broad (it catches overseas businesses operating in the UK if they otherwise fulfil the relevant criteria) and “carrying on a business” is not defined;
- The legal requirements are minimal – leaving businesses plenty of discretion to determine the contents (and quality) of their Statements; and
- In-scope businesses can publish a Statement that states they have taken no steps to tackle modern slavery - and still be legally compliant.

In response to these issues, the Report makes a series of general recommendations including:

- Suggesting that the government should establish an internal list of businesses falling within the scope of section 54 – however, it is emphasised that businesses themselves must remain responsible for determining if they need to produce a Statement;
- Establishing a central, government run Statement repository where businesses are required to upload their Statements – this should be easily accessible to the public free of charge;
- Statements should be dated and be clear about which 12 month period they relate to;

- Suggesting that the MSA is amended so that in-scope businesses can no longer publish a Statement simply saying that they have taken no steps to address modern slavery in their supply chains;
- Making it a requirement that an in-scope business reports under the categories set out in section 54(5) of the MSA – at the moment these are just suggested areas that a business “may” include, which means that reporting is patchy from one business to the next. These categories relate to the organisation’s structure, its business and its supply chains, its policies in relation to slavery and human trafficking, its due diligence processes in relation to modern slavery, areas of its business where there is a risk of slavery and human trafficking taking place, its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains (measured against appropriate KPIs) and the training it provides to its staff;
- Highlighting the importance of embedding modern slavery reporting into an organisation’s culture;
- Amending the Companies Act 2006 so that in-scope companies are required to refer to their Statement in their annual reports – and amending section 54 of the MSA to impose a similar obligation on non-listed companies that are obliged to make a Statement but would not be captured by the Companies Act reporting requirements;
- Amending the legislation to clarify that businesses are required to consider the entirety of their supply chains – and if a business has not done so, it should explain why not and set out what steps it is going to take in the future;
- Requiring in-scope companies to have a named, designated board member who is personally responsible for the production of the Statement;
- Improving the statutory guidance on the MSA to include a template of the information businesses are expected to provide in their Statement;
- Requiring the Anti-Slavery Commissioner to monitor compliance and report annually; and
- A more robust approach to dealing with non-compliance with section 54 – which is gradually brought in over the next few years to give businesses time to adapt to legislative changes. The Report mentions initial warnings followed by fines as a percentage of turnover, court summons and directors’ disqualification. It suggests the Government should set up or assign an enforcement body to impose sanctions on non-compliant businesses – with the fines levied being used to fund the enforcement body. The Report also suggests that failure to fulfil Statement reporting requirements or to act when instances of slavery are found should be an offence under the Company Directors Disqualification Act 1986.

On the public sector side, a couple of specific areas are highlighted by the Report. The Report states that there was widespread consensus that the Government should lead by example and also be covered by the requirements of section 54. Some public bodies are already reporting on a voluntary basis – but there is currently no legal requirement for the public sector to report. The Report proposes that Government departments should publish a Statement at the end of the financial year, approved by the department’s board and signed by the Permanent Secretary as Accounting Officer. Local Government, agencies and other public authorities should publish a Statement if their annual budget exceeds £36 million. The Report also suggests that Government should further strengthen its public procurement processes to make sure that non-compliant businesses in scope of section 54 are not eligible for public contracts.

Looking ahead, the direction of travel for large businesses appears to be enhanced reporting requirements under the MSA and a more robust enforcement process – with the possibility of fines and penalties for non-compliance following in the future in addition to damage to reputation. We expect the review to report to the Home Secretary later in the spring, after which the report will be laid in Parliament. Even in the current political climate, this is likely to be an issue upon which all sides of government find common ground.

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 after March this year they may publicly name and shame non-compliant businesses. It should be noted that a business’ prior Statements should remain accessible from a prominent position on its website - to enable stakeholders and the wider public to track progress year on year. Against this backdrop, now is the time to review your internal compliance processes relating to the MSA and to consider what the contents of your next Statement may look like given that it could be under more intense scrutiny than has previously been the case.

Written by Emma Grant and Raymond Silverstein

Contact



Raymond Silverstein

Partner

raymond.silverstein@brownejacobson.com

+44 (0)207 337 1021

Related expertise

Commercial law

Criminal compliance and regulatory

Employers and public liability

Employment

Financial services regulation

Modern Slavery Act