

TRANSPARENCY IN SUPPLY CHAINS

RESPONSE TO THE GOVERNMENT'S CONSULTATION ON STRENGTHENING THE UK'S MODERN SLAVERY ACT

Business welcomes the opportunity to work with the government to improve the effectiveness of the UK Modern Slavery Act (MSA). All forms of modern slavery are abhorrent and the CBI, and the 190,000 businesses it represents, strongly support action to eradicate exploitation in supply chains both in the UK and internationally.

Responsible businesses have long taken steps to prevent modern slavery and promote sustainable development. The MSA must continue to build upon the UN Guiding Principles on Business and Human Rights which business fully supports. These recognise that businesses have a fundamental responsibility to respect human rights in their operations and supply chains which complements, but is distinct from, state's duty to protect individual's human rights.

Exercising their responsibility to respect human rights is especially important where gaps in national legislation or its enforcement mean that businesses are not confident that individual's human rights are protected. Where these gaps exist, business action can help to close them. Businesses must, and the vast majority do, play their part in the collective duty to tackle modern slavery.

This responsibility starts with effective due diligence, which the MSA has successfully put on board agendas across the UK. As part of their responsibilities, business must limit and remedy modern slavery risks within their business and supply chain, which exist in domestic and international supply chains alike. The increased risk of modern slavery in ever more interconnected and global supply chains must be balanced with the fact that businesses do not have full control, either in commercial or legal terms, of their supply chain.

As such, it is incumbent on businesses to manage the risk of complex chains through due diligence, good governance, constructive dialogue with suppliers and, when necessary, by notifying suppliers or state authorities of known or suspected exploitation. Where businesses do so, interconnected and global supply chains promote development outcomes, as recognised by the UN Global Compact on Sustainable Development Goals.

They also underpin, and are the product of, the UK's ecosystem of small, medium and large business. The strength of SMEs in the UK contributes to the complexity of domestic supply chains, but also to the diversity, innovation and productivity of its economy. Disproportionately applying the MSA such that it requires assurance, rather than risk assessment, increases the likelihood that responsibility for (and cost of) due diligence is pushed down the supply chain. This would have the unintended effect of making it more cost/reputationally-effective for top and mid-tier businesses to only/primarily trade with larger businesses that they can rely on to be required to audit their suppliers.

The MSA should be applied such that it promotes sustainable and effective supply chain practices between small, medium and large businesses through a risk management approach. To do so, business supports the government's objective to drive compliance with the MSA and encourage action that goes above and beyond minimum standards. Balancing this objective with proportionality in what businesses are expected to report and the practicality of what the government can enforce means that:

- Mandating the content of statements must still enable businesses to take account of specific supply chain risks

- Improving the quality of statements will be driven through publication on a central registry, but hindered by a single reporting date
- Effectively tackling non-compliance should improve risk and intelligence based labour market enforcement

Mandating the content of statements must still enable businesses to take account of specific supply chain risks

The MSA intends to make businesses account for the steps they are taking to prevent modern slavery. The strength of the current narrative approach is that it has compelled companies to be transparent about, establish or improve due diligence processes relative to their individual business. Its emphasis on transparency as a mechanism to change behaviour, rather than as a compliance exercise, has contributed to increased scrutiny on modern slavery among company directors.

Business wants the government to retain this strength, and spirit, of the MSA when designing changes to the content of modern slavery statements. Many businesses already structure their statements using the six suggested content areas.¹ Business can support these areas being mandated, so long as companies retain flexibility in reporting such that the actions they take and report on continue to be those most relevant to the business. Businesses must continue to be able to produce nuanced statements that reflect the particular sector in which they operate and nature of their supply chain.

A clear basis for reporting on a 'comply or explain' basis is integral to this. Businesses should not report that they have taken no action in the previous 12 months against any of the six mandated areas without explanation. But there are legitimate reasons that a company might not report on all six areas. Mapping suppliers, having a due diligence process and training staff might not be relevant to all legal entities within a group structure in scope of the MSA – for example where legal entities are holding companies, referenced in a group report, that do not employ people or produce goods or services.

Businesses focus, and report on, what action is most likely to mitigate modern slavery risk in their operations. Finite resource means that these actions are necessarily targeted. A company might therefore prioritise risk limitation in its business or in a specific product line over taking less targeted steps throughout its supply chain. Any new requirements in the content of modern slavery statements must retain flexibility to account for such variances, with explicit guidance on legitimate reasons accepted for a business to not report on each area. This is crucial for effective enforcement, discussed in the final section of this response.

Businesses must also retain flexibility to provide a proportionate level of detail against mandated contents. The UK's MSA is unlike similar international legislation in requiring businesses to seek to account for, and limit labour exploitation risk, at all levels of their supply chain. Most businesses can do so with a high degree of assurance for their first-tier suppliers, with the complexity of risk management and due diligence increasing further down their supply chain. A mandated requirement for businesses to assess risk and ensure the effectiveness of due diligence must accept a proportionate level of reporting based on what it is reasonable for companies to know, have resource to investigate and the control to remedy.

¹ These include 1) The organisation's structure, its business and its supply chains; 2) Its policies in relation to slavery and human trafficking; 3) Its due diligence processes in relation to slavery and human trafficking in its business and supply chains; 4) The parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk; 5) Its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate; 6) The training and capacity building about slavery and human trafficking available to its staff.

Recommendations

1. Make it mandatory, on a comply or explain basis, for businesses to report against six areas in their modern slavery statements that they are already advised to include.
2. Introduce guidance that clearly states legitimate reasons that a business might not report against all six mandated areas.
3. Through guidance, set out proportionate expectations for what level of detail businesses are required to report.

Improving the quality of statements will be driven through publication on a central registry but hindered by a single reporting date

Encouraging businesses to share industry good practice by improving their ability to compare and learn from others' modern slavery statements is key to improving due diligence throughout supply chains. Business supports the introduction of a public registry for this purpose, and to make it easier for consumers, clients and investors to access their statements. It will also improve the government's ability to enforce compliance with the MSA deadline as checking that a statement had been submitted for the preceding year in which a business was in scope is more resource-effective than searching the archived statements on a business' website.

However, business is deeply concerned by the proposal to introduce indicators of reporting quality into the registry as it is unclear what benchmark could take the diversity of a business' supply chains into account. Given that the nature of their supply chain and sector in which they operate dictates the due diligence that a business undertakes, an absolute measure of quality would be difficult to apply to a narrative statement with any degree of assurance.

The potential reputational risk of being judged as having a poor-quality statement against a crude benchmark would be unacceptable to business. Instead the registry could be used to highlight compliance with the MSA against minimum criteria (i.e. on-time reporting, correct sign-off, engagement with mandated areas of statement content) and which companies have wilfully not complied in the past.

This information, and an easy ability to compare their statements to others, would better enable businesses to leverage the value of their supply chain. Business wants a public registry which sorts modern slavery statements by sector and notifies them when the statements of (a self-selected list of) key competitors or suppliers are published.² This would encourage more businesses to benchmark their statements' quality against sector peers and recognised industry leaders. Easier access to and comparison of statements would also help businesses more effectively hold suppliers to account for the quality of their statements.

Promoting the effectiveness of reporting depends on retaining a deadline that accords with business' year-end

Business is deeply concerned that the introduction of a single reporting deadline would risk the quality of companies' modern slavery statements and not lead to the intended outcome of increased compliance. The main driver for non-compliance is poor enforcement of the MSA, not a lack of clarity about the date by when the legislation requires businesses to publish. While business supports increased engagement with the MSA among consumers, clients and investors, they do not believe that a single reporting deadline is an effective way to achieve it. Generating PR and press activities should not be prioritised over the quality and accuracy

² Businesses also recognise the value in introducing a more advanced notification system that highlights when competitors or suppliers do not meet minimum compliance criteria.

of statements. Doing so would undermine the ultimate objective of the MSA to use transparency to drive action that tackles modern slavery.

It is essential, therefore, that the MSA continues to require businesses to report six months after their financial-year end to promote quality statements. A single reporting deadline is only meaningful where businesses are required to report on information related to the same reporting period. The MSA is designed to require businesses to account for action and investments related to their preceding year-end, which is different for each business.

The data on which businesses report is often recorded based on, and verified at, their year-end. Business is concerned that a single reporting deadline could increase the risk of data inaccuracies or reduce companies' willingness to put (unverified) data into the public domain. This could discourage businesses from reporting against KPIs or on the measurable impact of the action they take, as intended by the MSA.

The MSA requires business' statements to be signed by a director and approved at board-level. For group businesses, this often involves board-sign off at the legal entity and parent level. It can take more than six months for some CBI members to ensure effective board-level engagement through the corporate governance cycle. Should a business be required to publish its statement to a timeline that does not accord with its year-end (or corporate governance cycle), it would risk less effective board-level scrutiny.

The UK's MSA is one part of what many businesses report against to disclose their corporate responsibility in addressing social challenges including labour exploitation. Many businesses in scope of the MSA are required to report on international legislation including the French Duty of Care Law, EU Non-Financial Reporting Directive and Australian Modern Slavery Act. Similar legislation to prevent child labour in the Netherlands takes effect next year. Many businesses also choose to report against sustainability initiatives like the UN Global Compact, Ethical Trading Initiative, Workforce Disclosure Initiative or ISO Standards.

The more time and resource businesses need to spend on reporting, the less they can invest in action to tackle modern slavery. Businesses often use similar information in multiple reports: removing business' flexibility to report within six months of their year-end would duplicate and add resource requirements on businesses that seek to align their MSA statement with other international or non-financial reporting. Even for companies that exclusively report at the UK level, a significant proportion align their MSA publication date with their annual accounts. Such behaviour, which requires a flexible publication deadline to be maintained, should be encouraged as it demonstrates companies' commitment to their MSA obligations and increases the likelihood of their statement being scrutinised by customers, clients and investors.

Recommendations

4. Introduce functionality into a public registry (e.g. sector-searches, notifications, minimum compliance criteria) that gives businesses, investors and consumers information to drive up the quality of modern slavery statements.
5. Avoid a simplistic assessment of reporting quality in a public registry that creates a risk that business' statements are judged as poor-quality because of a benchmark that cannot take the diversity of supply chains into account.
6. Retain the deadline for businesses to report their modern slavery statement six months after their year-end to ensure the quality of statements – this supports accurate, impact-led reporting, effective board-scrutiny and international and voluntary disclosures.

Effectively tackling non-compliance should improve risk and intelligence led labour market enforcement

The effectiveness of the MSA depends on how it is enforced. Business fully supports the effective enforcement of the MSA as the best means to drive up compliance. This is a shared business and government objective which would improve awareness of supply chain risks and due diligence processes across UK supply chains and protect compliant businesses from operating on an uneven playing field.

Enforcement of the MSA should be proactive, targeted and proportionate, and support wider intelligence-led labour market enforcement activities. The enforcement of business' transparency obligations is, and must continue to be, materially different to the enforcement action taken against individuals that perpetrate or facilitate modern slavery. For transparency to be effective, the government's approach to MSA enforcement must not discourage businesses from being open about where they suspect, have identified or remedied labour exploitation in their supply chain.

Business must step up to prevent all forms of non-compliance with the MSA. But there is an important difference in business behaviour between wilful and unintentional non-compliance. Unintentional non-compliance is usually caused by a technical error – such as a broken link to a business' modern slavery statement on their website. Enforcement action must respond differently to instances of wilful and unintentional non-compliance, and in proportion to its nature, severity and a company's willingness to rectify the breach.

The intention of the MSA is to drive business action so the primary objective of enforcement action should be to hold wilfully non-compliant businesses accountable. Penalties must be applied to companies that wilfully (and repeatedly) fail to publish a modern slavery statement. The government should first proactively target businesses that have failed to publish a modern slavery statement since the MSA came into effect. Such behaviour increases the risk that businesses have poor awareness of, or have taken no action to mitigate, modern slavery risks within their supply chain. The government's labour market enforcement strategy shows that wilful non-compliance in one area of labour market regulation correlates with non-compliance in another. Business supports the government sharing information about wilful non-compliance with the MSA via its Intelligence Hub to improve risk-based and intelligence-led enforcement across the labour market.

Corporate fines are an important enforcement tool, and business supports their introduction to tackle wilful or repeated non-compliance. The government could face the unintended consequence of business' disengagement with the MSA if it used corporate fines as a first-line approach to penalise unintentional non-compliance. The level of fine should be proportionate to the offence of failure to publish a compliant modern slavery statement, while still acting as a deterrent. Fines should be levelled at the company to denote a corporate failure and could be applied according to categories that relate to a business' size.

Deterrence is one part of effective enforcement: government investment is also needed to help reduce unintentional non-compliance. Business supports a staged approach to enforcement activity which in the first instance notifies non-compliant businesses of a breach. This gives businesses an opportunity to rectify breaches where they have made a mistake, without diverting significant government resource away from proactive enforcement against persistent non-compliance.

This approach should be taken alongside steps to raise business' awareness of their obligations under the MSA, particularly among those just above the turnover threshold for reporting. The government should promote the statutory guidance, which business supports, to those in scope and must target communications to affected companies in the event of any changes to the MSA. The CBI would be happy to support joint promotional activities via its communication channels.

Recommendations

7. Establish a robust, staged enforcement approach which focuses resources on proactively targeting wilfully or repeatedly non-compliant businesses, sharing this information where appropriate with other government bodies to improve risk-based and intelligence-led enforcement.
8. Introduce proportionate fines, levied against the company, to businesses that fail to publish non-compliant modern slavery statements after being notified of the breach in the first instance.
9. Raise awareness of business' obligations to prevent unintentional non-compliance by promoting the statutory guidance and highlighting any changes to the MSA to businesses in scope.

People and Skills Directorate
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