
Submission to UK Government Home Affairs Committee Inquiry

Progress since the Introduction of the UK Modern Slavery Act

6 September 2018

Introduction

The Institute for Human Rights and Business (IHRB) appreciates the opportunity to make a submission to the UK Government Home Affairs Committee Inquiry into progress since the introduction of the UK Modern Slavery Act 2015. As an international civil society organisation, IHRB commends the Committee for welcoming submissions from a diversity of stakeholders.

IHRB fully supports the UK Modern Slavery Act and believes that such legislation can play a significant role in preventing forced labour and trafficking within the UK and abroad. The Modern Slavery Act helps to protect vulnerable workers, particularly women and migrant workers, along with those who may face discrimination due to ethnicity or caste. As well as protecting workers, the Act allows appropriate recognition of law-abiding businesses that seek to ensure and promote responsible practices.

About IHRB

Founded in 2009, IHRB is the leading international think tank on business and human rights. IHRB's mission is to shape policy, advance practice, and strengthen accountability in order to make respect for human rights part of everyday business.

IHRB's programmes focus on **migrant workers**, and the **financial**, **extractives** and **ICT** sectors. IHRB helped to develop and now hosts the **Centre for Sport and Human Rights**, and is a founding partner of the **Corporate Human Rights Benchmark**. IHRB has also founded centres for responsible business in **Myanmar** and **Colombia**.

The UK Modern Slavery Act in Context

The UK Modern Slavery Act (UK MSA/the Act) demonstrates the UK Government commitments to business and human rights and in particular aligns with the following:

UK National Action Plan for Business and Human Rights

UK National Action Plan for Business and Human Rights, as set out in *Good Business – Implementing the UN Guiding Principles on Business and Human Rights (updated May 2016)* promotes the government's vision of a "golden thread of safeguards in society that are good for human rights". Whilst safeguarding democratic freedoms, the rule of law, good governance, property rights, transparency and civil society, the government's stated aim was also to create the correct market environment where business can flourish in a stable and sustainable manner and generate long term growth.

2014 ILO Protocol to the Forced Labour Convention (1930)

In January 2016 the UK Government ratified the *2014 ILO Protocol to the Forced Labour Convention (1930)*. This key piece of international law requires member states to support supply chain due diligence by both the public and private sectors, but does not indicate exactly how this should be done nor make such due diligence mandatory. As such, key pieces of national legislation, such as the UK MSA, set the precedent for how businesses should respond to issues such as forced labour and human trafficking.

The Global Sustainable Development Goals

The Global Sustainable Development Goals launched at the United Nations in Sept 2015 set out to "mobilize efforts to end all forms of poverty, fight inequalities and tackle climate change". Whilst not legally binding, the expectation on all countries is that they will take ownership and establish frameworks for the achievement of the goals. Sustainable Development calls particularly relevant to the UK MSA include:

- SDG 8.7 calls on countries to take "immediate and effective measures to eradicate to eradicate forced labour, end modern slavery and human trafficking.
- SDG 8.8 calls on countries to "protect labour rights and promote safe and secure working environments for all workers including migrant workers in particular women migrants and those in precarious employment."

It should also be noted however that ensuring a secure and stable operating environment for business both in the UK and globally will provide the level playing field that law-abiding businesses need to operate effectively, with positive impacts on a range of other development outcomes outlined in the *Sustainable Development Goals*.

The Impact of the UK's Modern Slavery Act 2015

In the United Kingdom, the Modern Slavery Act 2015 has greatly increased awareness and catalysed action by both business and government to prevent forced labour and trafficking. IHRB believes the Act has been instrumental in delivering significant change in company practice and has seen anti-slavery initiatives being undertaken by companies individually and collectively in a range of sectors. In particular, it has encouraged engagement and action from companies and industry sectors not normally exposed to market-based pressure through consumer-facing reputational risk.

A common misconception of the Act is that it only applies to larger companies – those above the £36 million threshold for transparency reporting requirements. This is not the case - the Act itself applies to all companies, whatever their size. Modern slavery is just as likely to be found in smaller companies as large ones. Government efforts should ensure that awareness of modern slavery, and how it manifests itself and insinuates itself within normal everyday business operations, is universally applied.

Business efforts to combat modern slavery should be consistent with the UN Guiding Principles on Business and Human Rights, and in particular aligned with the corporate responsibility to respect human rights, including:

- A public human rights policy commitment;
- Human rights due diligence: the set of ongoing processes through which the company “knows and shows” that it is respecting human rights in practice;
- Active engagement in the remediation of impacts the company has identified it has caused or contributed to.

These steps are particularly pertinent in addressing forced labour and trafficking, and any company seeking to prevent forced labour and trafficking in its operations should be able to demonstrate and communicate them externally. Indeed, all companies should assess their risks and impacts, integrate and act on those findings, track their actions, and communicate on their effectiveness. Each of these actions is crucial in effectively preventing and mitigating harm.

IHRB believes that the transparency reporting requirements of the Modern Slavery Act and associated due diligence have therefore been key drivers of change. The most impactful aspects of the transparency reporting provision of the Act are:

- The threshold of £36 million turnover captures many companies (in the region of 12,000-20,000), some of which are headquartered abroad but still have a footprint in the UK. Covering a wide breadth of companies has many positive aspects: greater transparency of company performance will encourage both deeper and broader efforts by companies to prevent slavery, satisfying rising customer and client expectations, increasing the sharing of best practice within and across sectors, catalysing new alliances, working groups and initiatives, and ensuring constantly evolving proactive responses to the issue.
- The requirement of annual Board level sign off has given the issue of modern day slavery and global supply chains particular prominence at the highest levels within companies, elevating the issue beyond “discretionary CSR”.
- The Act has additional significance because it is supported by the mandate of the Independent Anti-Slavery Commissioner as well as other important initiatives such as the Gangmasters and Labour Abuse Authority.

Preventing Modern Slavery – The Importance of Responsible Recruitment

Effective action to address the vulnerability of migrant workers in global supply chains is a critical challenge that requires additional steps by the UK government and other actors. In 2011 IHRB launched the **Dhaka Principles on Migration with Dignity**, and in 2014 a **sector guide** for the European Commission on the global employment and recruitment industry, both products of years-long multi-stakeholder consultation processes. In all our work, we have observed how third party labour provision is one of the key risk areas for exploitation, which in its worst forms can create situations of forced labour or human trafficking.

Recruitment of workers was expressly referenced as a potential area of risk in the **2014 ILO Protocol** to the Forced Labour Convention (1930). IHRB's research highlights that flawed recruitment processes are one of the most significant factors in allowing or engendering modern slavery. In particular, the payment of large recruitment fees by many migrant workers to secure employment abroad is itself exploitative, but also frequently creates situations of debt bondage. Unable to assert their own rights, migrant workers are made more vulnerable to further exploitation and abuse, including forced labour.

In the UK and much of Europe it is illegal to charge a recruitment fee to a jobseeker whether a national or a migrant worker. In many countries where global supply chains are located this is however common practice and many workers pay large fees and other charges to secure work abroad. Even where the practice is illegal, lack of effective enforcement means that many workers still face these costs, engendering debt bondage and subsequent vulnerability to further exploitation including in the supply chains of many British companies. A global prohibition on workers paying recruitment fees and effective action by governments and business to prevent the practice are therefore important components in preventing modern slavery.

IHRB and increasingly many other stakeholders including governments, businesses and NGOs are promoting a different model of recruitment based on the **Employer Pays Principle** which states:

***No worker should pay for a job:
The costs of recruitment should be borne
Not by the worker but by the employer***

Government action might include more effective supervision and regulation of the recruitment industry. It might also include stipulations within public procurement contracts as found in the United States **2012 US Executive Order Strengthening Protections to Prevent Trafficking in Persons in Federal Contracts** which expressly prohibits the charging of recruitment fees to workers.

The issue of recruitment fees being paid by workers is also very much on the operational agendas of international companies. IHRB has led the development of the **Leadership Group for Responsible Recruitment** – a group of 13 multinational enterprises supported by civil society organisations and the International Organisation for Migration (IOM) who have committed to the 'Employer Pays Principle'. These companies are all working to prevent recruitment fees being paid by workers in their supply chains and are advocating within their business and other relationships for increased action to prevent the practice and to support ethical recruitment. The **Responsible Business Alliance**, the **Consumer Goods Forum**, the **International Tourism Partnership** and many other business organisations have included a prohibition on recruitment fees in their codes of conduct and business guidance.

Specific Recommendations

Coverage of Government Supply Chains:

The UK Government purchases goods and services from a range of suppliers at both national and regional level. This provides an opportunity to set high standards and demonstrate that government supply chains are neither complicit in forced labour or trafficking nor exempt from the need for ongoing human rights due diligence. The **Sancroft Tussel Report** suggests that 40% of all government contracts are currently awarded to companies who have failed to produce a modern slavery statement that complies with the law.

Businesses often suggest that they would take further steps to address modern slavery if government would lead by example, not least because many smaller companies sit in the supply chain of government, meaning additional measures would significantly increase the impact of the Act. With central and local government supply chains representing about 20% of GDP for most developed economies, not requiring public bodies themselves to provide a statement creates a significant gap in coverage and effectiveness of the Act. It also inhibits a free market for government contracts where law-abiding businesses may compete fairly within the law.

The requirement to report on efforts to address forced labour and trafficking in supply chains should apply not only to businesses, but also to public bodies procuring goods and services. This would involve excluding from public tender opportunities applicable companies that do not adhere to the law and fail to produce a modern slavery statement.

Improving the Quality of Modern Slavery Statements:

The government's stated ambition when drafting the legislation was not to be too prescriptive about what the modern slavery statements might include, producing a short list of points for guidance. IHRB would encourage consideration of the following key components as part of further steps required to strengthen reporting under the Act, either in the legislation itself or in associated guidance documents:

- **Grievance Mechanisms**

Remedy should be part of the legislation and an expected part of transparency reporting. Ensuring access to effective remedy is a key component of the corporate responsibility to respect, including in preventing forced labour and trafficking. The success of the Act is therefore contingent on ensuring effective state-based judicial and non-judicial mechanisms through which the victims of forced labour and trafficking may be supported and their grievances remediated, as well as adequate reference to business having in place appropriate grievance mechanisms or participation in external mechanisms to ensure access to effective remedy. As such, the Act should set a clear expectation that company statements should have to include a description of their efforts and performance on remediation.

- **Responsible Recruitment**

All companies should include explicit reference to how workforces are recruited and the Government must encourage companies to undertake due diligence specifically in relation to worker recruitment. Government expectations should include: i) a prohibition on recruitment fees being paid by workers in the company and in all company supply chains; and ii) a prohibition on document retention in the company and in all company supply chains.

- **Expanding the Focus to Business Relationships**

The Act focuses on a company's own business and supply chains, as does the 2014 ILO Protocol, but the UN Guiding Principles on Business and Human Rights require governments and businesses to consider human rights risks arising from all their business relationships – such as those relating to customers, consumers, joint venture partners and investors. For some business sectors, the largest risk of modern day slavery sits further “downstream” and not “upstream” – such as, for example, an extractive company that sells or trades commodities to new refineries or smelters in regions where forced labour is an endemic risk. As such, companies should be required to focus on assessing risks of modern day slavery arising in any type of business relationship, rather than limiting coverage to supply chains exclusively, in order to ensure companies prioritise their efforts where the risk is greatest.

Independent Anti-Slavery Commissioner:

The establishment of the position of an independent Anti-Slavery Commissioner has been an important factor in the success of the Modern Slavery Act. The Commissioner has a UK-wide remit to encourage good practice in the prevention, detection, investigation, and prosecution of modern slavery offences and the identification of victims.

In both the UK and abroad the Commissioner has served to champion the Act and the wider modern slavery agenda to a variety of stakeholders, overseeing and coordinating the response to the Act by government, business, and civil society. Through IHRB's work with business we have seen how this has catalysed engagement and change within a number of industry sectors. In particular, the work of the UK Commissioner in engaging with the private sector – either directly or connecting them with other stakeholders – has played a critical role in encouraging greater supply chain transparency.

It is crucial that the role of Commissioner be retained as an integral part of the Modern Slavery Act and the independence of the position be respected.

A Central List of Companies and Registry of Statements:

If the reporting requirements in Section 54 of the Modern Slavery Act are to be effective, and companies are to be held accountable through public and government scrutiny, details of who is required to report, and the information contained within modern slavery statements, need to be easily accessible to all stakeholders including business, academia, investors, trade unions, NGOs and government procurement teams. IHRB believes that two requirements are necessary to ensure this:

- A central list of all companies captured by the reporting requirements of the legislation, i.e. above the agreed turnover threshold; and
- An online register of company modern slavery statements.

When the Modern Slavery legislation was developed, the Government chose not to establish such a resource, though agreed such a registry would be useful. A group of civil society organisations has since stepped in to fill this void, creating www.modernslaveryregistry.org. However, the civil society led registry is, despite best efforts, incomplete, with particular difficulties in knowing when and where companies are posting their statements. This undermines the ability of stakeholders to access and assess statements. We would recommend the Government now takes a stronger leadership position in establishing a central registry that supports the aims of the legislation by making all company statements easily accessible.

Companies that are conglomerates, holding companies, or have subsidiary brands, should be required to submit details of their prominent brands, and search filters should include ways to easily identify the key brands owned by companies. The register should also feature access to all company statements over a given time period. This may mean that companies need to provide archive access to previous statements, ideally for a minimum of the last three years to ensure sight of any change over time. Company statements should be supplied directly to the Independent Anti-slavery Commissioner and logged on the register. The Government should produce a monthly list of newly registered statements that is also made available to the general public.

We believe that as well as allowing greater public scrutiny of company statements and activities to prevent slavery, a government-held registry and requirement to submit statements to the Commissioner would encourage greater compliance with the Act.

Enforcement of Legislation:

Successful regulation is dependent on effective enforcement. This not only protects workers from possible exploitation but also delivers the level playing field law abiding businesses require to operate fairly and thrive in a competitive marketplace, without being undercut by companies able to dodge their obligations without fear of penalty. The Government must ensure adequate resources are invested in enforcement activities.

The Gangmasters Licensing Authority and subsequently the Gangmasters and Labour Abuse Authority have proved effective mechanisms for better enforcement of labour laws relating to the use of agency workers in those sectors (predominantly agricultural, horticultural and food processing) which fall under the existing licensing regime. Whilst IHRB welcomes the extension of the GLAA remit to include other sectors, we believe an extension of the proven licensing model to further industry sectors - particularly construction, hospitality and care - would ensure greater compliance with the law, help to prevent abuse and exploitation including modern slavery, ensure a level playing field for law-abiding businesses across all industry sectors, and help prevent tax and VAT fraud. The experience from the GLAA licensed sector is that compliance with the licensing regime is not onerous and has delivered a clear operating threshold which protects all law abiding businesses and prevents exploitation of workers including modern slavery.

The effectiveness of transparency reporting is similarly contingent on there being robust monitoring and enforcement mechanisms to ensure compliance. Government and civil society scrutiny of company statements will help improve company engagement with the issue, but should also be matched by clear sanctions on companies who fail to comply with the Section 54 reporting requirements of the Act.

Moving Beyond Simple Disclosure:

Many businesses covered under the Modern Slavery Act have indicated they would be grateful for greater clarity from Government about what steps due diligence should entail and what some of the most salient issues might be (or how to go about identifying them). The recent report of the [UK Parliament's Joint Committee on Human Rights](#) for example, to which IHRB gave evidence, concluded that it should not just be the act of disclosure that is a legal requirement, but that businesses should demonstrate how they have taken reasonable steps to mitigate and prevent harm in their own operations and in domestic and international business relationships.

Conclusion

The Government of the UK should be commended for the global leadership position it has taken in combating modern slavery. The UK Modern Slavery Act has been a significant development in protecting workers from forced labour and trafficking, supporting responsible business and preventing criminality. We believe the continued and further success of the legislation is however, as outlined in this submission, contingent on increased Government activity to promote and ensure compliance with the Act and in doing so increase efforts by all stakeholders to do their part in preventing modern slavery.

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IHRB Resources Relevant to this Consultation

- [The Dhaka Principles for Migration With Dignity](#)
- [Forced Labour Briefing](#)
- [Recruitment Fees Briefing](#)
- [Fees and IDs – Tackling Recruitment Fees and Retention of Workers Passports](#)