



## Modern Slavery Update: Nov 2018

**Recent months have borne witness to increasing pressure from NGOs, watch groups and the UK Government on organisations to comply with their corporate reporting obligations under the UK's Modern Slavery Act (MSA). If you fail to comply, be prepared for public "naming and shaming" in 2019.**

The Home Office has written directly to senior managers of 17,000 businesses and organisations about modern slavery in their supply chains and encouraged adherence to transparency reporting obligations under the MSA. These letters are often generic in nature and are part of a government-wide effort to ensure companies are adequately addressing slavery and human trafficking risks in their business and supply chains. The Home Office intends to publish a list "naming and shaming" non-compliant entities in March 2019.

Likewise, NGOs such as the Business and Human Rights Resource Centre (BHRRC) have also been contacting companies that qualify under the MSA in an effort to ensure that statements are promptly published.

The press and NGOs are also publishing rankings and surveys on MSA compliance and the level of effort being made. For example, last year, BHRRC [ranked FTSE 100 companies](#) on how well they complied with their corporate reporting obligations under the MSA, including the extent to which such companies incorporated modern slavery into their risk assessments and provided employees with adequate training.

### BUSINESSES AND THEIR SUPPLY CHAINS

As highlighted in our previous [MSA update](#), UK government guidance published last year encourages companies that do not meet the £36m 'turnover threshold' to voluntarily produce an MSA statement and prescribes the six categories of information to be included in MSA statements (outlined in s.54(5) of the MSA) more strictly.

In response to growing pressure in this area, some businesses are making concerted efforts to boost their MSA commitments. In August 2018, John Lewis announced that it will provide survivors of modern slavery paid work placements that could lead to permanent jobs - one of a growing number of businesses to do so. Waitrose, which is owned by John Lewis, is also taking positive steps to eradicate slavery from its supply chains. Last year they banned luxury granite worktops from sale after several rights groups found many of the labourers mining the rock in southern Indian quarries were victims of modern slavery.

However, other businesses have been slower to make progress. Companies continue to be criticised for failing to meet the basic legal requirements under the MSA, i.e. ensuring

statements are (i) easily accessible on a company's homepage, (ii) signed by a director (or equivalent) and (iii) approved by the managing board (or equivalent). The 2018 Chartered Institute of Building MSA Report states that there is evidence that many companies are watering down their MSA statements by removing mention of risk or even positive actions that have been taken. This appears to be driven by a fear of media exposure and concerns that statements may be used as evidence in future prosecutions.

The spectre of potential future legal and litigation risk following public statements and reporting such as under the MSA does exist, but this must be kept in perspective. Whilst it is important for companies not to overstate their commitments and accurately reflect their efforts, a 'box-ticking' approach to MSA reporting should also be avoided. The direction of travel in this area indicates that companies are likely to come under more, rather than less, scrutiny for their reporting efforts in the future. Kevin Hyland, the UK's Independent Anti-Slavery Commissioner, warned that:

*"Companies that are non-compliant...are at risk, according to the legislation, of civil proceedings. It may be that if non-compliance continues at current levels, we will start to see this action taken".*

## INDEPENDENT GOVERNMENT REVIEW

In July 2018, the Home Office announced plans to launch an independent review of the MSA. The review is aimed at strengthening the UK's ongoing response and accelerating progress from government and businesses in eradicating modern slavery. The Rt Hon Frank Field MP said:

*"The government is providing the inquiry, and all the groups that they will consult, with a major opportunity to build on the world leading anti-slavery Act so that greater justice is gained for the growing number of people enslaved in Britain and through the supply routes for businesses in this country."*

A key focus of the government's review will target businesses by looking at what more can be done to strengthen the MSA and minimise the risk that the goods and services available in the UK are produced through forced labour and slavery.

## MSA PUBLICLY AVAILABLE COMPLIANCE LISTS

In the meantime, independent lists tracking MSA statements have been set up by Transparency in Supply Chains (TISC) [website](#) (maintained by Semantrica Ltd, a small independent UK social enterprise) and the [Modern Slavery Registry](#) (maintained by the BHRRC). These publicly available lists make it easier for the public to access MSA statements and ascertain whether a particular company has complied with their MSA reporting obligations.

As these lists are not always accurate, we would encourage you to check them to make sure that your MSA statements are correctly referenced, particularly if you have complex corporate structures and elected to submit joint statements.

## INTERNATIONAL DEVELOPMENTS

On an international level, several countries have bolstered their efforts in tackling modern slavery and human trafficking in businesses.

In **Hong Kong**, a draft Modern Slavery Bill is currently under consideration. The bill was discussed at a meeting of the Panel of Security of the Legislative Council on 5 June 2018 and is similar to the MSA. If passed, it would impose a reporting requirement on bodies corporate and partnerships conducting business in Hong Kong (subject to a turnover threshold) to publish a slavery and human trafficking statement in each financial year.

In **Australia**, a Modern Slavery Bill was introduced to parliament in June 2018 that will require Australia's largest businesses, with an annual revenue of more than \$100m, to publish annual statements on the steps they are taking to address modern slavery in their operations and supply chains. The government has also committed \$3.6m to establish a 'modern slavery business engagement unit', to be housed within the Department of Home Affairs, which will advise the some 3,000 affected Australian businesses on the best way to address slavery.

# TRIVERS SMITH

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Parliament in **France** adopted a much-awaited law establishing a 'duty of vigilance' obligation for French parent and sub-contracting companies. This obligation requires companies to assess and address adverse impacts of their activities on people and the planet and implement related measures; judges may apply fines of up to €10m when companies fail to publish their plans. Although this law arguably goes further than the MSA in substance, it only applies to

large French companies that have more than 5,000 employees domestically or employ 10,000 employees or more worldwide.

The Netherlands, Switzerland and the United States are also currently considering similar legislation in this area. Of note, California already has human rights related supply chain transparency requirements under the California Transparency in Supply Chains Act 2010.

## **Key takeaways:**

- Ensure your MSA statements are:
  - easily accessible from the relevant company's homepage (i.e. clearly posted on the homepage and search engine discoverable)
  - signed by a director (or equivalent)
  - approved by the board of directors or governing members
- Follow [government guidelines](#) on content as closely as possible, including providing MSA training to relevant employees
- Update your existing statements on an annual basis to show genuine progress made, and avoid "box-ticking"
- In addition to ensuring your MSA statement is posted on your website in a prominent position, we would recommend taking the voluntary step of adding your statement to the TISC and BHRRC's publicly available MSA lists
- Identify a 'nominated person' within your organisation to manage MSA on a day-to-day basis and consider registering the nominated person with the Home Office - this will ensure they are kept up-to-date on regulatory developments in this area

## **FOR FURTHER INFORMATION, PLEASE CONTACT**



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