

November 12, 2018

UK Home Office Ramps Up Modern Slavery Statement Expectations – Recent Developments and Compliance Recommendations for Multinationals

Over the last month, the UK Home Office has sent letters to more than 17,000 companies that it believes are required to publish an annual statement under the UK Modern Slavery Act. **The letters request that companies register on the Modern Slavery Contact Database by November 18**, publish up-to-date modern slavery statements by March 31, 2019 and submit their statements to specified transparency databases. In this Alert, we discuss the Home Office letter and other recent developments under the UK Modern Slavery Act and share related compliance recommendations for multinationals with UK operations.

Attorneys
[Michael R. Littenberg](#)
[Andrew J. Dale](#)
[Amanda N. Raad](#)

The Home Office Letter

Letters were sent to companies that the Home Office believes are required to publish an annual modern slavery statement under the Modern Slavery Act, including many companies that have not previously published a statement. According to the UK Government, only approximately 60% of in-scope companies have published a statement.

The Modern Slavery Act transparency provisions, which require the publication of a modern slavery statement, apply to “commercial organisations” carrying on business in the United Kingdom that supply goods or services and have annual worldwide turnover of at least £36 million. For more information on who is required to publish a statement and statement content, see some of our earlier alerts, white papers, articles and webinars [here](#).

Modern Slavery Contact Database. The Home Office letter requests that recipient companies have a nominated contact register on the Home Office’s Modern Slavery Contact Database by November 18. By doing so, companies will receive updates from the Home Office to help improve their modern slavery statements. Among other things, the Home Office plans to distribute updated statutory guidance on reporting, a framework to help evaluate statement quality and best practice case studies.

The Contact Database registration page asks for basic information (name, job title, email address and company). It also requests that companies indicate their business sector, although this is not required to sign up. Each letter sent out by the Home Office has a unique letter code that companies are requested to enter when they register on the Contact Database. However, this also is optional.

Requested Publication Date. The Home Office letter requests that companies publish an up-to-date annual statement by March 31, 2019. The Home Office intends to publish a list of non-compliant companies following an audit of statements on March 31, 2019. It indicates in the letter that, if a company has not published a statement by that date or its statement is no longer up-to-date, the company risks being included on the non-compliant list.

The Modern Slavery Act itself does not contain a statement publication due date. The guidance under the Modern Slavery Act indicates that companies should publish their statements as soon as possible after the end of the applicable fiscal year, and that they are expected to do so within six months after fiscal year-end.

Submission to Transparency Databases. Under the Modern Slavery Act, companies are required to publish their statements on their websites. To enhance transparency, the Home Office letter also encourages companies to publish their statements on the database maintained by Transparency in Supply Chains (TISC) and the Modern Slavery Registry

powered by the Business & Human Rights Resource Centre. Statements can be submitted for free. TISC also has membership levels starting at £200 per year.

Guidance on Statement Content. The Home Office letter provides a high-level overview of the minimum legal requirements applicable to statements and recommended statement content. In this regard, the letter is consistent with the Modern Slavery Act and prior Home Office guidance. The only enhancement from prior guidance is that the letter indicates that group statements published by parent entities (which is the norm for multinationals subject to other modern slavery statement legislation) should clearly name the entities covered by the statement.

Other Recent UK Modern Slavery Compliance Developments

Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains. On September 24, Australia, Canada, New Zealand, the United Kingdom and the United States announced a set of four principles intended to provide a framework on which countries can build a strategy to take effective action to prevent and eradicate human trafficking from public and private sector supply chains. The principles are intended to align with the UN Guiding Principles on Business and Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the OECD Guidelines for Multinational Enterprises and the OECD Due Diligence Guidance for Responsible Business Conduct. The principles were announced at the UN General Assembly in New York.

The four principles are discussed below:

Procurement. Governments should take steps to prevent and address human trafficking in government procurement practices:

- analyze, develop and implement measures to identify, prevent and reduce the risk of human trafficking in government procurement supply chains;
- provide tools and incentives and adopt risk assessment policies and procedures that require their procurement officers and contractors to assess the nature and extent of potential exposure to human trafficking in their supply chains; and
- take targeted action, including adopting appropriate due diligence processes, to identify, prevent, mitigate, remedy and account for how they address human trafficking.

Private Sector Involvement. Governments should encourage the private sector to prevent and address human trafficking in its supply chains:

- work in partnership with business, workers and survivors to set clear expectations for private sector entities on their responsibility to conduct appropriate due diligence in their supply chains to identify, prevent and mitigate human trafficking; and
- provide tools and incentives to the private sector to encourage meaningful action and public reporting of their efforts, including through programs, policies or legislation.

Recruitment. Governments should advance responsible recruitment policies and practices:

- advance responsible recruitment practices, including by implementing policies that incentivize and support responsible practices, and by supporting initiatives such as the “Employer Pays Principle”; and

- contribute to the growing knowledge base of promising practices for protecting workers from fraud and exploitation in the recruitment process.

Cooperation. Governments should strive for harmonization:

- make reasonable efforts to share information and work with other committed governments to align existing and proposed laws, regulations and policies to combat human trafficking in global supply chains.

2018 UK Annual Report on Modern Slavery. This detailed report, which was released in October, provides an overview of modern slavery in the United Kingdom and how the Government has responded to the threat over the prior twelve months. The Report notes the following in the context of supply chain transparency:

- As discussed earlier in this Alert, the Home Office is writing to companies to support effective reporting under the Modern Slavery Act.
- A “Tackling Modern Slavery in Supply Chains” thematic group has been established. This group brings together key stakeholders to focus on business compliance with the Modern Slavery Act, as well as the sharing of best practice to inform the Government’s work to tackle modern slavery in public and private sector supply chains.
- The Cabinet Office will require the Government’s biggest suppliers to provide data and action plans for how they plan to address key social issues, including modern slavery. The Government previously published a Supplier Code of Conduct, available [here](#), indicating the standards and behaviors that are expected of Government suppliers.
- The Home Office, Cabinet Office and the Crown Commercial Service will develop further guidance to support contracting authorities to identify and mitigate against modern slavery risks in supply chains during procurement processes.

Modern Slavery Act Review. On August 17, the Home Office published the terms of reference of an independent review of the Modern Slavery Act that it had previously announced at the end of July. The aim of the review is to report on the operation and effectiveness, and potential improvements to provisions, of the Modern Slavery Act. The review is being led by Frank Field MP, Maria Miller MP and Baroness Butler-Sloss.

Among other things, the review will look at the transparency provisions of the Modern Slavery Act. As it relates to that portion of the Modern Slavery Act, the terms of reference indicate that the review should consider how to ensure compliance and drive up the quality of statements produced by companies.

The review will gather evidence and seek views from relevant stakeholders. The process may include a call for written submissions, evidence sessions on particular aspects of the Modern Slavery Act and interviews with representatives from civil society, business, law enforcement and other interested bodies. The review will aim to report to the Home Secretary before the end of March 2019. On completion, the review is to be compiled into a report, including recommendations, to be presented to the Home Secretary for approval.

Prior to completion of the final report, interim reports will be produced, with the initial focus on transparency in supply chains and the role of the Independent Anti-Slavery Commissioner. Interim reports on these topics are intended to be published by the end of November.

Compliance Recommendations

Register with the Modern Slavery Contact Database. We recommend that companies sign up for the Contact Database, even though there is no legal requirement to do so. Signing up for the Contact Database will help companies comply with the requirements of the Modern Slavery Act and prepare their statements, since they periodically will receive guidance updates from the Home Office.

Some companies have expressed concern that signing up for the Contact Database might be viewed as an acknowledgment or create a presumption that the company is required to publish a statement. We do not share this concern based on the set-up of the registration page. The registration form is not required to be submitted by a senior employee or authorized signatory, does not ask for compliance-related information (such as annual revenues) and can be submitted without entering the unique letter code provided by the Home Office. However, registration will undoubtedly be used to track the effectiveness of the letter campaign, and perhaps to generate follow-up requests to register if a company does not do so.

Assess Whether You Are Required to Publish a Statement and Whether Your Statement Is Compliant. As noted above, the Home Office believes that a significant number of companies that are required to publish a statement – perhaps 40% – are not doing so. It also believes that many statements do not meet the basic legal requirements of the Modern Slavery Act. For further information to help assess whether a modern slavery statement must be published and the requirements of the Modern Slavery Act, see some of our earlier alerts, white papers, articles and webinars [here](#).

If a company fails to produce a statement for a particular fiscal year, the Secretary of State may seek an injunction through the High Court requiring the company to comply. If the company fails to comply with the injunction, it will be in contempt of a court order, which is punishable by an uncapped fine.

Publish Your Statement Before March 31, 2019. As noted above, the letter requests that companies publish up-to-date statements by March 31, 2019. Based on Home Office guidance, a statement published within six months after fiscal year-end should be up-to-date. Consistent with that guidance, the prevailing practice thus far by December 31 fiscal year-end companies has been to publish statements during the second quarter, closer to June 30. We recommend that December 31 fiscal year-end companies accelerate preparation and publication of their fiscal 2018 statements so that the statements are published before March 31, 2019, to mitigate the risk of being included on the Home Office's non-compliant list. With a little advance planning, it should be relatively easy for most of these companies to publish their fiscal 2018 statements before March 31, 2019.

Submit Your Statement to the Transparency Databases. Although there is no requirement under the Modern Slavery Act to submit statements to the TISC database or the Modern Slavery Registry, we recommend that companies do so. As noted earlier, there is no cost for submitting a modern slavery statement to the databases.

As a practical matter, statements are likely to wind up on the databases anyway. If a company does not submit its statement, an NGO is likely to do so or it will be found through a website search by the database sponsor. Over the next couple of years, we expect the modern slavery statements of substantially all larger multinationals to be included on third-party transparency databases, since proposed Australian modern slavery legislation (discussed [here](#)), which is widely expected to be adopted, contemplates mandatory posting on a Modern Slavery Statements Register.

Submitting to the databases also may have benefits. Companies are more likely to receive credit from data analytics firms for modern slavery compliance efforts, since the disclosure will be easier for them to find. Information supplied by data analytics firms is increasingly being used by mainstream investors as part of their integration of environmental, social

and governance factors into investment decisions. In addition, if the statement is timely, inclusion in the databases will reduce the chances of the company inadvertently being included on a non-compliant list.

However, keep in mind that databases will archive statements for multiple years. This will make it easier for stakeholders to do year-over-year comparisons of statements. For some companies, this will put more pressure on continuous improvement of their modern slavery risk assessments, risk mitigation and other compliance initiatives and related disclosures.

Review Compliance Practices Against UK Government Procurement Expectations. As noted above, the Cabinet Office will require the UK Government's biggest suppliers to provide data and action plans for how they plan to address key social issues, including modern slavery. Large UK Government suppliers should consider proactively assessing their social compliance programs against the Government's Supplier Code of Conduct to determine whether enhancements should be made.

About Our Supply Chain Compliance and Corporate Social Responsibility Practice

Ropes & Gray has a leading Supply Chain Compliance and Corporate Social Responsibility (business and human rights) practice. With team members in the United States, Europe and Asia, we are able to take a holistic, global approach to supply chain compliance and CSR. Senior members of the practice have advised on these matters for almost 30 years, enabling us to provide a long-term perspective that few firms can match.

For further information on the practice, click [here](#).

Click [here](#) to visit our Supply Chain Compliance and CSR website.

To join our Supply Chain Compliance and CSR mailing list, click [here](#).