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UK Government Announces Commitment to Significantly Increase Modern Slavery Act Reporting Requirements

On September 22, the UK Government published its response to the 2019 public consultation on the Modern Slavery Act. In the response, the Government indicated it is “committing to an ambitious package of measures to strengthen and future-proof the Modern Slavery Act’s transparency legislation.” Among other things, the Government indicated it will require specific topics to be addressed in modern slavery statements, establish a single reporting deadline for all companies and require companies to submit their statements to a new Government registry. These and other contemplated changes to the Act and modern slavery reporting more generally are described in this Alert.

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The 2019 Public Consultation

As discussed in prior Ropes & Gray Alerts, the UK Government held a public consultation on the transparency, or reporting, provisions of the UK Modern Slavery Act during the summer of 2019. The consultation solicited views on possible changes to several aspects of the transparency provisions, including (1) the topics covered by statements; (2) potential features of a new Government-run reporting service for modern slavery statements; (3) establishing a single deadline for the publication of statements; and (4) the addition of civil penalties for non-compliance. The consultation followed a Government-commissioned independent review of portions of the Act. The independent review resulted in more than 20 recommendations relating to the transparency provisions, many of which carried over into the consultation and the changes to be made by the Government.

The Government received 724 responses to the consultation. A large majority (73%) were from consumers, following a campaign by Traidcraft Exchange and Fashion Revolution. Most of the remaining responses were submitted on behalf of organizations, with more than half of those responses coming from businesses and trade associations, although there also was a strong response from NGOs, charities, trade unions and universities.

The Government’s Response to the Consultation

Statement Content – Moving from Suggested to Required Topics

The Act requires statements to indicate the steps taken by subject commercial organisations during their most recently completed fiscal year to ensure that slavery and human trafficking are not taking place in any of their supply chains and in any part of their own business. Expanding on that disclosure requirement, the Act and subsequent guidance encourages, but does not require, commercial organisations to include in their statements information concerning six areas: (1) organizational structure, business model and supply chain relationships; (2) applicable policies; (3) due diligence and auditing process; (4) human trafficking risks and steps taken to assess and mitigate risk; (5) compliance effectiveness and KPIs; and (6) internal training. For more information on the entities required to publish a statement under the UK Modern Slavery Act and statement content and other requirements, see some of our earlier alerts, white papers, articles and webinars [here](#), [here](#), [here](#) and [here](#).

Seventy-eight percent of the respondents to the consultation agreed that mandating the areas to be covered by statements would encourage commercial organisations to take effective action. Most respondents also thought that all six of the currently suggested reporting areas should be mandatory. Just under half (49%) of the respondents proposed additional required statement content. The most frequently suggested additional topic area was remediation, followed by future plans to address modern slavery, disclosure of instances of modern slavery, whistleblowing mechanisms and

collaboration with external partners. Although these topics currently are not required to be addressed in statements, many companies do so. Fifty-seven percent of respondents agreed that commercial organisations should be permitted to not report on one or more required topic areas if they provide an explanation for omitting the area (what is often referred to as a “comply or explain” approach).

In its response, the Government indicated it will mandate the areas to be addressed in modern slavery statements. The mandatory topic areas will include the existing voluntary suggested areas, although in the shift to mandatory reporting they may be presented differently through the combination of some topic areas. If a commercial organisation does not take steps within a particular required topic area, it will be required to clearly state that. Commercial organisations also will be encouraged to provide the reason for not taking steps within a particular area.

The Government indicated it will consider how the reporting areas can be amended to incorporate some of the additional topics suggested in the consultation. The Government indicated it would expect remediation to be covered by the existing voluntary reporting areas, under due diligence. However in designing the format of the required topic areas, it will consider whether changes are needed to provide clarity.

Both of the other existing modern slavery reporting statutes – the California Transparency in Supply Chains Act and the Australian Commonwealth Modern Slavery Act – take a mandatory approach to statement topics. However, there are differences in the topics required to be discussed under those acts. It is a virtual certainty that the topic areas under the amended UK MSA will differ in some respects from both the California and Commonwealth acts, which will create additional complexity in drafting modern slavery statements. Notwithstanding that additional complexity, preparing a single, combined modern slavery statement will remain the right approach for most global businesses. For further information on the California Transparency in Supply Chains Act and the Australian Commonwealth Modern Slavery Act, see our earlier Alerts [here](#), [here](#), [here](#) and [here](#).

In the meantime, updated statement guidance will be published. As previously announced, the Government will publish updated reporting guidance in 2020. This will include best practice approaches to reporting against the future required topic areas. The guidance also will highlight the importance of transparency, risk-based action and industry-level collaboration to address shared challenges. In addition, the guidance will encourage commercial organisations to be open about their priority next steps for the coming year, although this will not be required.

Statement Publication – Moving from Company Website Publication to Submission to a Government Registry

Commercial organisations currently are required to publish their modern slavery statement on their website. Although submission to third-party databases is encouraged by current Home Office guidance, it is not required.

The Government previously announced its intent to establish a statement registry. Eighty-two percent of respondents to the public consultation did not think there would be any challenges to publishing statements on a Government registry.

In addition, the majority of respondents supported most of the proposed features of the reporting service. Sixty-three percent of respondents also suggested additional features, including access to guidance and advice, the ability to view whether statements meet relevant legal requirements and the option to filter statements by certain metrics, such as company size or industry. Most respondents also expressed support for features that would enable comparability.

In its response to the consultation, the Government indicated it will require commercial organisations to publish their statement on the Government-run registry. The Government indicated it will incorporate feedback from the consultation into the ongoing research and design of the registry.

Timing – Moving from Suggested to Mandatory, and the Same for All Companies Irrespective of Fiscal Year

The Act does not contain a fixed due date for publishing statements, although current Home Office guidance strongly encourages companies to do so within six months after their fiscal year end. Sixty-three percent of consultation respondents agreed that a single reporting deadline would clarify the reporting process, and 75% agreed that would make it easier for external parties to monitor whether statements are up-to-date.

The Government will introduce a single reporting deadline. Rather than requiring commercial organisations to report on activity undertaken during their most recently completed fiscal year, statements will cover a reporting period running from April 1 through March 31. This period was chosen because March is the most common month for the fiscal year end of UK businesses.

Modern slavery statements will be due on September 30, giving commercial organisations six months to prepare their statements.

A large number of U.S.-based companies or their subsidiaries are required to publish a statement under the Act. In most cases, those entities do not have a March fiscal year end. However, that should not present significant reporting issues, since modern slavery compliance generally is not fiscal year-based. Many U.S.-based companies already are subject to mandatory human rights reporting that is not tied to fiscal year. For example, under the U.S. Conflict Minerals Rule, compliance and reporting is calendar year-based. UK gender pay gap reporting is keyed off of an April 5 snapshot date.

For some companies, the new statement due date may throw a wrench in combined reporting under the UK Modern Slavery Act and the Australian Commonwealth Modern Slavery Act. The due date of Commonwealth MSA statements is determined by fiscal year end. Under that act, statements are required to be submitted within six months after fiscal year end. However, this challenge also should be manageable.

Other Statement Enhancements

The Government will amend the Act to require modern slavery statements to state the date of board (or equivalent) approval and director (or equivalent) sign-off.

Commercial organisations currently are permitted to produce a group statement that covers multiple entities subject to the Act. However, the Act does not require group statements to name the entities covered by the statement. The Government will amend the Act to require group statements to name the entities covered.

Although not currently required, the foregoing disclosures are encouraged by existing Home Office guidance and are good practices followed by a large number of companies.

Additional Enforcement Options Remain Under Consideration

The Government's response notes that, throughout the consultation process, respondents were clear that there was a need for greater enforcement of the current reporting requirement, but views on the nature and level of civil penalties were mixed. Sixty-one percent of respondents agreed that penalties for failing to publish or to publish a compliant statement should be capped at a maximum prescribed amount. The most frequently suggested approach was that fines should be calculated according to the commercial organisation's size or turnover.

In its response, the Government referenced the July 2019 public consultation launched by the Department for Business, Energy & Industrial Strategy. As part of that consultation, BEIS solicited views on whether establishing a new single enforcement body for employment rights could improve enforcement and create a level playing field for the majority of

businesses who are complying with the law. The Government indicated it will consider enforcement options in line with the development of the single enforcement body for employment rights and issue a further update in due course.

Current Compliance Threshold to Be Maintained

The Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations adopted pursuant to the Act established the current £36 million turnover compliance threshold. Under the Act, the Secretary of State is required to carry out a review of the Regulations every five years and publish the conclusions. Although the consultation did not contain a question on the turnover threshold, many respondents commented on the appropriateness of the current threshold in the context of determining an appropriate threshold for public sector compliance (which is an aspect of the response not discussed in this Alert).

In its response, the Government indicated that the current turnover threshold remains appropriate as the effectiveness and fairness of the statement requirement rely on capturing a significant number of commercial organisations that have sufficient resources to meet the spirit of the requirement and influence their supply chains. Accordingly, the Government will retain the £36 million threshold and focus on improving compliance at that threshold.

Next Steps

As noted in the Government's response, many of its commitments – including those pertaining to statement content requirements, Government registry publication, statement due date and the introduction of civil penalties – will require changes to the Act. The Government indicated that these changes will be made when parliamentary time allows. Accordingly, companies should continue to monitor developments under the Act as part of their global modern slavery compliance. Otherwise, no action needs to be taken at this time as a result of the Government's response to the consultation.

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