

CONSTRUCTION

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THE UK'S MODERN SLAVERY ACT: SHINING A LIGHT ON SUPPLY CHAINS

DAVID LAWLER, MANAGING DIRECTOR, NAVIGANT

To the requirement to “Know Your Customer”, legislators have now added “Know your Suppliers” – increasing risk for senior management, and widening the scope of non-financial corporate reporting in the UK.

SUMMARY

The spread of the trafficking of people and forced labour in a growing number of sectors in the UK and Ireland was recently confirmed as the U.S. Department of State released its latest global report on Trafficking in Persons (“TIP”).¹ The construction industry is **not** free of this global problem. The TIP Report records that some --

*“Migrant workers in the UK are subjected to forced labor in agriculture, cannabis cultivation, **construction**, food processing, factories, domestic service, nail salons, food services, car washes, and on fishing boats.” (Emphasis supplied)*

The UK's Modern Slavery Act 2015 is **now** in force.

The legislation aims to mitigate the human rights abuses associated with modern slavery and economic servitude worldwide, by bringing increased transparency to corporate supply chains. But well-intentioned businesses may unwittingly include practices linked with modern slavery deep inside their supply chain, in areas which are ‘out of sight’.

For firms in the construction industry, achieving transparency throughout the supply chain can be particularly challenging given the complex web of subcontractors involved. Smaller businesses are also likely to feel the effects of the new rules, because larger companies will want to ensure that their entire supply chain is clean, and so in turn will be pushing this due diligence requirement onto their suppliers.

The risk to companies and their executives who incorporate services or products made using a workforce suffering human rights abuses can be severe.

The legislation also requires that large companies produce and publish a report on what they are doing to prevent modern slavery from occurring in their supply chains. The Act has been framed without harsh penalties for non-compliance, in the expectation that corporates will embrace the reporting requirement out of self-interest - in other words they will see the reputational risks of non-compliance.

1. U.S. Department of State, Trafficking in Persons Report, Washington, D.C., June 2016. <http://www.state.gov/j/tip/rls/tiprpt/>

The legislation continues the trend in corporate reporting on wider aspects of a company's policies and impact on society, beyond the balance sheet or profit and loss account. Such moves increase the compliance and regulatory burden on companies, raising the question of whether they are ready to adequately respond.

THE PROBLEMS OF MODERN SLAVERY

The risks for businesses

Under the terms of the UK's Modern Slavery Act 2015 ('MSA'), which was passed into law in October 2015, organisations must take action to prevent modern slavery occurring in their supply chain and report on the steps they have taken to do this. Failure to do this effectively can lead to:

- Reputational risk, resulting in activist action and customer concerns
- Legal risk, including the risk of prosecution, litigation, complaints to regulators, and breaching ethical procurement terms
- Financial risk, reflecting investor and customer sensitivities and increasing demands for CSR performance data as part of tendering processes
- Operational risk, arising from labour disputes and disruption to supply chains.

A worldwide problem

Modern slavery encompasses slavery, human trafficking, forced labour and economic servitude. The scale of the modern slavery problem is global. According to estimates from the United Nations, the modern slavery and human trafficking trade is worth in excess of US\$32 billion per year.²

The International Labour Organization estimates that at least 21 million people worldwide are victims of forced labour.³ Of these, the majority are exploited in businesses involved with agriculture, construction, manufacturing, hospitality, and domestic work. The most recent edition of the U.S. Department of Labour's List of Goods Produced by Child Labour or Forced Labour includes 136 goods produced through labour exploitation in 74 countries across the world.⁴

Modern slavery is an international crime involving a number of source and transit countries, with devastating impacts on individual victims. But they also affect those organisations caught up in increasingly high profile media and online campaigns alleging human rights abuses.

PUBLIC SCRUTINY AND MEDIA ATTENTION

Human rights organisations

In the UK, organisations such as Amnesty International, the Institute for Human Rights and Business, and Engineers Against Poverty are already taking an active interest in the MSA and are likely to push for non-compliant organisations to be made to comply. Non-Governmental Organisations are policing corporate compliance, and a number of high-profile construction-related examples of non-compliance have been made public.⁵

Media coverage

Media coverage of modern slavery in the UK has tended to focus on human tragedies such as the cockle pickers who drowned in Morecambe Bay,⁶ or the collapse of a building in Bangladesh, leading to injury or death for 3,500 garment workers.⁷

Elsewhere, there has been a great deal of attention and public scrutiny of global high profile events such as the 2016 Olympic Games in Rio or the upcoming FIFA World Cups in Russia and Qatar.

In December 2010, Qatar won its bid to host the 2022 World Cup. In preparation, Qatar will spend an estimated US\$100 billion on infrastructure, including a new airport, roads, hotels and stadia. The international media, unions and human rights organizations have shone a spotlight on abuses of migrant workers' rights in Qatar.⁸ Major concerns include the controversial "kafala" sponsorship system;⁹ lack of freedom of association and the right to unionise; confiscation of passports; and substandard working and housing conditions.

2. https://www.unodc.org/documents/human-trafficking/UNVTF_fs_HT_EN.pdf

3. http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_181922/lang-en/index.htm

4. https://www.dol.gov/ilab/reports/pdf/TVPRA_Report2014.pdf

5. <http://www.ciob.org/sites/default/files/CIOB%20Research%20-%20The%20Darkside%20of%20Construction.pdf>

6. <http://www.thebay.co.uk/news/local-news/special-report-the-cockling-tragedy-ten-years-on/>

7. <http://www.globallabourrights.org/campaigns/factory-collapse-in-bangladesh>

8. <https://www.theguardian.com/global-development/2016/mar/31/migrant-workers-suffer-appalling-treatment-in-qatar-world-cup-stadiums-says-amnesty>

9. <http://dohanews.co/qatars-emir-approves-kafala-reforms-changes-more-than-one-year-away/>

THE MODERN SLAVERY ACT 2015

The UK Modern Slavery Act

Introduces tough sentences for companies and individuals found guilty of aiding, abetting, counselling, or procuring slavery, human trafficking, forced labour and domestic servitude.

Requires companies to prepare a Slavery and Human Trafficking (SHT) Statement for each financial year.

- organisations with a global turnover of £36 million per year (US\$47m).
- organisations carrying out any part of their business in the UK (no minimum 'footprint')
- all sectors
- both goods and services (not just supply chains for goods).

The UK government has spearheaded international efforts to deliver truly effective anti-slavery legislation. In 2014, the Home Office launched a modern slavery awareness campaign to raise awareness that slavery does still exist in the UK. This was followed by the Modern Slavery Act 2015 itself ("the MSA"), which consolidated previous legislation dealing with slavery, child labour, and human trafficking. The MSA received Royal Assent on 26 March 2015, and came into force on 29 October 2015. The Act is the first of its type in Europe, and covers England and Wales only, although some sections do apply to Scotland and Northern Ireland.

The MSA aims to:

- help law enforcement (the National Crime Agency, the police and other agencies) fight modern slavery more effectively, by creating two new civil orders to prevent modern slavery
- establish an Anti-Slavery Commissioner
- make provision for the protection of modern slavery victims.

Karen Bradley MP, Minister for Modern Slavery and Organised Crime, said:

"How businesses respond to [the Modern Slavery Act] will be crucial. I want to challenge them to look for the most innovative, the most exciting, the most far-reaching and forward-thinking solutions to the problem of modern slavery in supply chains. Together, I am confident that we will meet these challenges, and lift thousands of vulnerable people out of horrendous abuse."

What is modern slavery?

The MSA deals with slavery, human trafficking, forced labour and domestic servitude.

Forced labour

Forced labour means "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself [or herself] voluntarily."¹⁰

Forced labour primarily depends on the nature of the relationship between a person and an 'employer'. It does not depend on the type of work performed, or the legality of the work itself. In its guidance, the International Labour Organization categorises eleven indicators of forced labour:

- Abuse of vulnerability
- Deception
- Restriction of movement
- Isolation
- Physical and sexual violence
- Intimidation and threats
- Retention of identity documents
- Withholding of wages
- Debt bondage
- Abusive working and living conditions
- Excessive overtime

Sometimes the difference between forced labour and situations where people may be working in sub-standard conditions of employment (which is not an offence) may be not immediately clear. This is because forced labour occurs on a spectrum of exploitation, and it is not clear where decent work ends and labour exploitation begins. In between the extremes, there are a variety of employment relationships in which the element of free choice by the worker begins to be constrained, and can eventually be cast into doubt. The majority of cases occupy this middle ground, and often it is the combination of factors which lead to a relationship being categorised as modern slavery.

10. ILO's Combating Forced Labour: A Handbook for Employers and Business. ILO's Article 2.1 of the Forced Labour Convention No. 29

How does the Law deal with Human Rights Abusers?

The MSA introduces tough sentences for human traffickers and those found guilty of slavery, servitude, and forced or compulsory labour or human trafficking offences (including aiding, abetting, counselling, or procuring them). Guilty verdicts can result in custodial sentences that include life imprisonment for the most serious offences.

Moreover, the MSA allows the Courts to confiscate the assets of those found guilty. It does this through Section 7 of the MSA, which amends the Proceeds of Crime Act 2002 (POCA), which sets out the regime for the confiscation of the proceeds of crime. Under the previous slavery laws, only human trafficking offences were criminal lifestyle offences under POCA. Section 7 MSA now ensures that slavery, servitude and forced and compulsory labour offences will also be treated as a 'criminal lifestyle' offences. The distinction is important because under the MSA, as they are now 'criminal lifestyle' offenses, the Court is permitted to assume that all the assets that the defendant has, or has had in the last 6 years, are the proceeds of crime, all of which are all liable to be confiscated. Any confiscation is not limited just to those that can be directly linked to the crime in question, as was the case under the previous slavery laws.

By its very nature, human trafficking is a difficult crime for law enforcement to tackle because criminals prey on the vulnerabilities of victims. But they are making real efforts to prosecute offenders and there have already been prosecutions.¹¹

Reporting Requirements

The MSA also requires companies to prepare a Slavery and Human Trafficking (SHT) Statement for each financial year. The reporting requirement applies to all commercial organisations which supply goods and services and have a minimum total turnover of £36 million per year. (This is the threshold in the Companies Act 2006 for determining whether a company qualifies as 'large'.) Small or medium companies (i.e. those with a turnover of below £36 million), are not required to prepare an SHT Statement under the Act, although many are doing it, or plan to do it.

CONTENTS OF THE SLAVERY AND HUMAN TRAFFICKING STATEMENT

The SHT statement should explain the steps a company has taken over the previous year to make sure that modern slavery is not taking place in any part of its own business or in any of its supply chains. (Although the MSA unfortunately fails to set out what it means by a "supply chain").

The SHT Statements must set out the steps taken to tackle slavery and trafficking – they are not required to guarantee that the company and its entire supply chains are slavery free.

The Government has issued guidance in a document entitled 'Transparency in Supply Chains etc - A Practical Guide'.^{12, 13} Although the MSA itself has not been prescriptive about the layout, content or level of detail in the SHT Statement, the Guide usefully suggests the kind of information a company may *wish* to consider putting in it, which is as follows.

- An organisation's structure, business and supply chains;
- Any slavery and human trafficking policies;
- Any due diligence processes in relation to slavery and human trafficking in its business and supply chains;
- The parts of an organisation's business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps an organisation has taken to assess and manage that risk;
- 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; and
- The training about slavery and human trafficking available to its staff.

In practice, the form and detail of an SHT Statement will differ depending on the organisation's industry sector, the complexity of its structure and supply chains, and the location of its suppliers. Clearly the work going into the statement will be greater for an organisation with significant overseas operations and lengthy supply chains. What is encouraged however is a succinct statement using simple language with links provided to relevant further documentation, and organisations will inevitably build the content of the statement over consecutive years as they develop and refine their procedures for tackling modern slavery.

11. As an example, the US Defense Advanced Research Projects Agency's MEMEX program (a combination of the words "memory" and "index") provide advanced Internet search, analysis and data-visualization programs that perform complex computations and data analysis to search the internet in search of information about human trafficking. Such capabilities are becoming a crucial component of fighting modern slavery, and have already resulted in successful prosecutions.

12. As required under section 54(9) of the Act. See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471996/Transparency_in_Supply_Chains_etc__A_practical_guide__final_.pdf

13. A further specific guide has been published for companies in the hospitality industry. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380514/FactsheetHospitality.pdf

Publishing the SHT Statement

Publishing a SHT Statement is compulsory for all companies that fall within the turnover requirements. This also means that, if necessary, an organisation must make a statement that it has taken no such steps. (Although this option will be unattractive from a public relations view point.)

The Act and the Guide mix firm legal obligations to make an SHT Statement, with mere recommendations as to its content. This makes it difficult to know what exactly is required to comply. Nevertheless, the essence of the disclosure duty under the MSA is about promoting good practice and transparency. Although publication is mandatory, legal penalties for non-compliance are not set out under the MSA, however, a company could conceivably be forced (through a High Court injunction) to comply. Persistent failures could lead to company directors being found criminally liable, and fined, disqualified, or even jailed in the case of persistent offenders.

To Which Companies Does it Apply?

Whether an organisation falls within the scope of the disclosure duty is not always obvious for international groups where there is a non-UK parent company or non-UK subsidiaries, and the associated guidance to the MSA¹⁴ requires companies to adopt a “common sense” approach to deciding whether an organisation is carrying on a business in the UK. The rules can be summarised as follows:

- The turnover threshold of £36 million is global turnover, not just that arising within the UK.
- Total turnover is calculated as the turnover after deduction of trade discounts, VAT and other taxes. With franchising models, only the turnover of the franchiser is included.
- If the organisation engages in commercial activities, it must report irrespective of the purpose of the activities, and whether profits are made.
- A commercial organisation means a body corporate or partnership, which may have been incorporated or formed anywhere in the world. In practice this means companies and partnerships carrying on any part of their business in the UK even though it might be owned/controlled by a company incorporated or a partnership formed outside the UK.
- Having a UK subsidiary will not, of itself, mean that a non-UK parent company is carrying on a business in the UK.
- However, even if a subsidiary is not carrying out a business in the UK, it may form part of the parent’s supply chain (hence the parent’s statement would need to include steps taken in relation to that subsidiary)

For which periods does it apply?

The requirement to prepare a slavery and human trafficking statement came into force on 29 October 2015.

SHT Statements must be published within a maximum of six months of the end of the financial year which falls on or after 31 March 2016. This means companies with a financial years ending 31 December 2016 must publish their SHT Statements by 30 June 2017.

There is a transitional period so that any organisation with a financial year end between 29 October 2015 and 30 March 2016 will not be required to make a statement for the financial year 2015/2016.

In all cases the Statement must be approved and signed by an authorised person, for example, in the case of a company approved by the board and signed by a director (or partner in the case of partnerships).

Where should companies publish the Statement?

The MSA statement is a public-facing document. All organisations must upload their Statement on their own website with a logo on the home page in a prominent place. If there is no website, the organisation must provide a copy of the Statement to anyone who asks for this within thirty days of receiving the request.

Is there a Repository?

In addition, many organisations submit their statements to an online central repository. Transparency In the Supply (TISC) [at www.tiscreport.org] is a UK central registry for SHT Statements, which is searchable by members of the public. Organisations submitting their statements to TISC, will be able to verify that they are in compliance with the MSA. It is a paid-for service but it can be useful for filing annual SHT Statements and signing up for email reminder alerts for when statements are due. TISC also publishes a live index of business performance by sector, including those who fail to report.

A register of existing reports maintained by the Business and Human Rights Resource Centre NGO can be accessed through this link:

<http://business-humanrights.org/sites/default/files/documents/Modern%20Slavery%20Act%20Statement%20Registry-24-05-2016.pdf>

14. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471996/Transparency_in_Supply_Chains_etc__A_practical_guide_final_.pdf

Penalties

For corporates, what are the sanctions for non-compliance with the reporting requirement? Under the terms of the Act, the Government has powers to bring civil proceedings in the High Court for an injunction in England and Wales, or the equivalent Court of Session for specific performance in Scotland.

In practice this means there will be no financial or criminal penalties for non-compliance, although failure to publish a report on the steps they are taking to eradicate modern slavery from their supply chain may preclude them from eligibility for government contracts.

A review of the first 75 SHT Statements found that most did not meet the requirements of the MSA legislation: 33 were not signed by a company director and 33 companies had not placed a link from their website's homepage to their statement. Only 22 met both requirements, and only 9 met the minimum requirements on the areas of information that should be included in the statements, such as company policies and due diligence.¹⁵

STEPS TO MSA COMPLIANCE

Getting started

All large companies need to comply with and report under the new MSA, but it is seldom necessary for an organisation to start from scratch. Many will already have specific Corporate Social Responsibility projects that they can build on to address the requirements of the MSA, and many will already be disclosing these in various internal and external reports.

Compliance with the MSA involves teams from multiple functions within organisations:

Internal – policies and training

- Getting the team in place...
 - Tone at the top: senior commitment is essential
 - Appoint a person within the organisation to take charge. In practice, this is often the chief compliance officer.
 - Assign responsibilities across the business units.
 - Allocate a budget, including training costs.

- Risk and gap assessment. Risk assess to determine where modern slavery and trafficking are likely to occur in the organisation and supply chains, and so define the areas of focus. Consider, for example:
 - what the organisation is already doing
 - understanding and describe the business's supply chains
 - publically available data on high risk sectors, geographies, products and services
 - likelihood and severity of the risk.
 - current level of stakeholder reporting and employee engagement
- Identify existing slavery and human trafficking (SHT) policies within the group (if any). Develop and implement a modern slavery (or broader human rights) policy, if none exists.
- Is there a mechanism for suspicions of SHT to be reported?
- Do staff need to be trained on this topic? Staff awareness of the MSA and who they should report to if they have concerns.
- Provide whistleblowing mechanisms, in local languages, including for subcontractors, and ensure it is well publicised.

External - Supplier management and due diligence

- Review existing contracts with suppliers. Do these contain MSA-type provisions?
- Develop a supplier code of conduct including modern slavery standards
- Put in place a standard clause in supplier contracts to the effect that:
 - Suppliers confirm that they have MSA policies and procedures in place
 - There is a mechanism to audit suppliers' compliance.
- Identify any high risk suppliers for due diligence, audits, improvement plans and training (or potentially ending the relationship). This is especially important for agencies who supply labour.

Monitoring

- Track the effectiveness of steps taken to combat slavery and trafficking.
- Consider remediation where the organisation may have caused or contributed to modern slavery – this might include apologies, compensation or more practical measures.

¹⁵ <http://corporate-responsibility.org/ngos-publish-new-guidance-for-companies-on-reporting-under-the-modern-slavery-act/> and <http://on.ft.com/1Ykcyiw>

Reporting: the Annual SHT Statement

- Determine whether or not the organisation is required to prepare a SHT Statement under the MSA.
- Consider using a repository to assist

RE-FOCUSING ON THE SUPPLY CHAIN

Globalisation of both supply and demand, the requirement for greater flexibility and the development of new business models – each one of these factors is a challenge for any business to effectively manage and monitor its supply chain. The MSA further highlights the requirement for companies to understand and take responsibility for behaviour within their supply chain.

Modern slavery is a common risk in the supply chain in many sectors, but traditional audits rarely spot it, and even if the risk is noted, it is notoriously difficult to prevent.¹⁶ Supply chains can be long and complex and often companies don't have enough visibility or influence to address the problem. Given that a large international group may in excess of 100,000 suppliers, even starting the journey towards MSA compliance may seem like a herculean task.

Companies are already familiar with the requirement to fully understand its supply chain for bribery risks, and many are already managing effectively the bribery risks forced onto main contractors by non-compliant sub-contractors. The MSA extends this requirement to understand and mitigate modern slavery risks as well.

As with anti-bribery and corruption, a company can move closer to the identification and management of these risks by:

- Data analytics on its supply chain to identify higher risk suppliers. Navigant, for example, can take an organisation's supplier data, and with some clever algorithms and in some visualisation techniques, we can show exactly where in the supply chain the uncertainty and possible violation of the MSA might be hiding. This enables large organisations to quickly identify where to focus their attentions in complying with the MSA in their supply chains. Where there are many levels in the supply chain, ascertaining the risks could become quite complicated; the relationship between the organisation and its suppliers will be central to managing the process and reviewing current supply contracts will be essential.
- Doing adequate risk-based due diligence on high risk suppliers for additional comfort that there are no pre-existing problems about which companies must be (and are expected to be) aware. This is already necessary for anti-bribery and corruption purposes, and this discipline must now be extended for MSA purposes.

CONCLUSIONS

The thrust of the MSA is similar to that of the Bribery Act. With the MSA, the UK continues to mandate that companies understand what problems may be lurking inside its supply chain, and assume liability if they are not rectified.

The SHT Statement does add to the rising pressure on businesses to address their impacts on human rights in their business and supply chains, and as the nature and purpose of corporate reporting widens yet further, it adds a new report onto their already heavy burden. But it took several years for anti-bribery compliance to be taken seriously, and even more for prosecutors to effectively use criminal sanctions to prosecute organisations and the executives who turned a blind eye to criminality. Companies are now better at auditing their global operations and working environments, and best practice is to anticipate and embrace the changes brought on by the MSA and move towards more holistic corporate reporting.

There is increasing evidence that risks to human rights frequently converge with more general risks to business. Companies offering early statements and transparent reporting have formalised a robust human rights framework within their businesses, which has worked to their advantage. As customers take greater interest in the origins and authenticity of the things they buy, providing them with reports that guarantee their ethical provenance will become an important part of the marketing mix and will give producers and retailers new ways to capitalize on brand value. When this fails, even iconic brands confront reputational firestorms when ethical and environmental problems within the supply chain capture the attention of journalists and activists.

Research by reporting consultancy Black Sun has shown that even modest changes to the reporting framework have had a positive effect, finding that changes forced on them by new rules have acted as a catalyst for companies to revisit policies and processes.¹⁷

Statements under the MSA are able to:

- protect and enhance an organisation's reputation and brand;
- grow the organisation's customer base as more consumers seek out businesses with higher ethical standards;
- improve investor confidence;
- increase staff retention and loyalty based on values and respect; and
- develop more responsive, stable and innovative supply chains.

16. Sedex, the Supplier Ethical Data Exchange, is a not for profit membership organisation dedicated to driving improvements in responsible and ethical business practices in global supply chains. - See more at: <http://www.sedexglobal.com/#sthash.5mBPjXGE.dpuf>

17. <https://www.blacksunplc.com/en/insights/research/integrated-reporting-benefits-research.html>

Although the law (and risk of prison sentences) is a powerful motivator, the best business are now turning regulations into a competitive advantage, and find that increased disclosure results in increased share price performance.

BUILDING ON THE SHT STATEMENT: THE GLOBAL AND GRADUAL INCREASE IN NON-FINANCIAL REPORTING

The MSA's reporting duty sits within a wider context of human rights reporting under the Companies Act and the (forthcoming) EU Non-Financial Reporting Directive ('NFRD'). The MSA risks are only some of the human rights risks that could exist in the supply chain. The actions taken to eliminate other supply chain risks, such as sub-standard conditions of employment, and workplace health and safety may well be worthy of similar disclosure. The new Companies Act and NFRD are making such disclosures more routine, and there is flexibility and indeed encouragement for any organization to disclose their efforts in these areas (including reporting in a separate report).

Companies Acts 2006 and 2016

The current UK framework for non-financial (narrative) reporting, is contained in the Companies Act 2006 regulations. Alongside the financial reports are the Strategic Report (being a concise description of the company's financial year including disclosure on environmental, social and community, employee matters and human rights), and the Directors' Report (which contains supporting disclosure for the Financial Statements and Strategic Report).

UK quoted companies already have an obligation to disclose information about social, community and human rights issues in their annual strategic reports under Chapter 4A of the Companies Act 2006. The reporting requirement under the MSA will build on these. For many companies however, especially large private companies, this reporting requirement under the MSA will be new.

In 2016, the UK Companies Act will be amended to strengthen current corporate duties to report on human rights, not just slavery and trafficking.

EU Non-Financial Reporting Directive

Adopted in September 2014, the NFRD amends EU Directive 2013/34/EU. It requires disclosure to provide investors and other stakeholders with a more comprehensive view of a company's performance. It requires entities to disclose information in their management reports about their:¹⁸

- business model
- policies including due diligence processes implemented
- principal risks and outcomes including as a minimum:
 - environmental risks
 - social and employee situation
 - respect for human rights
 - anti-corruption and bribery issues
 - diversity in their board of directors

The Directive will apply to large public-interest entities with more than 500 employees: approximately 6,000 large companies and groups across the EU. Public-interest entities include listed companies as well as some unlisted companies, such as banks, insurance companies and other companies that are so designated by Member States because of their activities, size or number of employees.

EU NFRD in UK law

As an EU directive, the NFRD requires enabling legislation within each EU member country to enter into domestic law. The UK Government recently asked for views on how to implement the requirements of the NFRD, with its preferred solution being to implement the directive only for Public Interest Entities with more than 500 employees.

This consultation ended in April 2016, but the current Brexit referendum is likely, at the time of going to print (July 2016), to have put the brakes on this UK legislation.

¹⁸. Article 19a(1) and Article 29a(1)

Large UK Companies

Businesses subject to the MSA, the Companies Act and the EU NFRD are now expected to produce two statements – the SHT Statement and any relevant information on human rights in the annual Strategic Report. (Broadly, this affects businesses meeting the turnover requirements for criteria for a SHT Statement who are also UK/EU listed companies and have 500 or more employees (some non-quoted financial services companies are also included). Essentially, in complying with the NFRD, companies will also be complying with the MSA provided that they count modern slavery as one of their ‘principal’ human rights risks (the NFRD requires disclosure only of an organisation’s ‘principal risks’).

Although a joint statement may be possible, most companies are still opting for two separate statements, however making more than one statements will clearly be a concern for organisations at a time when the new reporting requirements described above are proliferating generally. Next year’s UK gender pay gap reporting duty being another example of further required disclosures.¹⁹

Reporting Holistically

As a joined-up approach will be necessary to avoid duplication and to leverage internal knowledge and support in its non-financial reporting, we are increasingly working with organisations deciding to adopt the a broader, consistent approach to human rights reporting. As well as the MSA, Companies Act, and NFRD, organisations are using international guidelines such as the UN Global Compact,²⁰ UN Guiding Principles on Business and Human Rights,²¹ and the OECD Guidelines for Multinational Enterprises,²² and ISO 26000 on Social Responsibility²³ to frame their non-financial reporting obligations and requirements.

United Nations Guiding Principles Reporting Framework

The UN Guiding Principles on Business and Human Rights set out the policies, processes and actions required of all businesses to meet their responsibility to respect human rights. They expect companies to ‘know and show’, through human rights reporting, how they prevent and address salient adverse human rights impacts. The guideline for this reporting, the UN Guiding Principles Reporting Framework (UNGPRF)²⁴ was launched in February 2015. Although nowhere mandatory, the UNGPRF are useful because they put corporate responsibility to respect human rights into everyday language: a set of 31 straightforward questions to which any company needs to have answers as to report on how they respect human rights, and a roadmap for the journey that a company needs to undertake to focus on those areas that pose the highest risk of creating a severe negative impact.

19. <http://www.equalpayportal.co.uk/government-action/>

20. <https://www.unglobalcompact.org/>

21. <http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx>

22. <http://www.oecd.org/corporate/mne/>

23. <http://www.iso.org/iso/home/standards/iso26000.htm>

24. More information can be found on www.ungpreporting.org