

DRAFT ETI Response to Government TISC Consultation

24 Sept 2019

2) Would mandating the areas that statements must cover encourage organisations to take effective action?

Mandating the areas that statements must cover would have several advantages. It would:

- Give companies more clarity on what is expected of them in order to report well, which is currently lacking
- Enable greater comparability between published statements, allowing good practice to be recognised and poor performers to be held to account
- Ensure that all statements include the most important information, or explain clearly why they do not include it (e.g. because of gaps in knowledge or uncertainties)

Mandating specific areas of statement content would therefore increase the effectiveness of Section 54, driving up the standard of reporting, increase the space for scrutiny by civil society organisations, investors, parliamentarians, members of the public, and hold companies to account for what they say they are doing in each of the areas. This should help level the playing field and drive greater transparency; and could also drive a race to the top on effective action to combat human trafficking and modern slavery.

3) If the legislation was amended to mandate the areas that statements must cover, which of the six areas currently set out in Home Office guidance should be required?

All six areas of currently recommended content should be made mandatory (whether or not the current exact phrasing or ordering of those areas is retained). Many of the leading companies structure their statements according to the six areas of recommended content and existing guidance on best practice (such as the ETI Modern Slavery Statement Framework) also follows that structure.

There are a number of concerns about definitions and expectations in some reporting areas (e.g. effectiveness and KPIs) which need further refining and better guidance. Our members want to ensure that the legislation mitigates against and does not reward 'tick-box compliance' approaches. Companies should be reporting on changes in the way businesses are managed and operate (including purchasing practices), that they evaluate risk, embed prevention, and importantly, that they ensure appropriate and effective grievance and remedy where abuse, exploitation and harm of workers is found in supply chains and own operations. More and better guidance is needed in each of the six areas.

Specific clarity should be provided on the requirement for a company to report on the scope of the reporting requirement – specifically, the entirety of its supply chain (not only the top tiers) and its own operations (including logistics, warehousing, catering, cleaning etc.). Even if companies have not fully mapped their supply chains and may not yet be aware of MS risks in these areas, they should state what they know, don't know, and what measures they will take to know and do more.

The Guidance on reporting should also include advice that companies should engage with key stakeholders in undertaking modern slavery due diligence and in writing their statements. These would include internal stakeholders, such as sourcing, HR, procurement, commercial departments, and external stakeholders such as suppliers, customers, trade unions, civil society organisations, international organisations and expert advisors.

3b) Are there any further reporting areas that should be required?

We would like to see one additional mandatory reporting requirement on:

Grievance and Remedy – policies, mechanisms, management and monitoring:

Information on what action the company has taken to establish and embed a grievance and remedy systems for workers within their operations and supply chains, particularly focusing on the most vulnerable workers. All workers must have access to a credible independent grievance mechanism in cases of abuse, exploitation and harm. Companies should be required to report on how worker grievances are handled in a safe and confidential manner, ensuring that this does not expose them to further victimisation or harm, and the measures companies are taking to ensure that remedy is provided where harm has occurred. Mechanisms must be communicated with all workers in appropriate languages and formats. Remedy measures should involve consultation with workers and their representatives in the design, monitoring and assessment of satisfactory outcomes. This area must receive close scrutiny and oversight by senior management and assigned Board members.

3c) Should any of the six suggested areas (and any additional areas suggested) be combined?

Some argue for alignment with reporting areas in the Australian MSA, as many companies report in several jurisdictions. None of our members thought there was a case for fewer reporting areas.

4) Should organisations be able to choose not to report on one or more of the required areas if they provide an explanation for omitting this area?

No. Organisations should not be able to choose not to report on any of the mandatory areas of content. If organisations were able to do so, it would lead to inconsistency between published reports, making comparison more difficult and weakening accountability. This would reduce the incentivisation of good practice. Leading companies are already reporting against all of the six recommended areas of content. Companies that are not reporting well, or are non-compliant, should be held to account. They should not be able to make excuses for a lower-quality report.

Some companies may have limited information to report within any one section of their report, perhaps due to their size or sector. In that case, such a company should include what they do know in their report, while noting any gaps in their knowledge or uncertainties – as well as what actions they are undertaking to address those gaps.

5) Would organisations face any challenges if it became mandatory to report on specific areas?

Leading companies are already reporting on the six recommended areas of content (and on additional areas in many cases). These organisations would not face any additional challenges if it became mandatory to report on those areas. Some organisations that are not currently reporting or are reporting at a low level may find it challenging to do so – but the requirement to report against specific areas should drive them to improve their practice. Guidance, advice, training and additional support to these organisations would help to improve their reporting.

6) Would there be any challenges associated with requiring organisations (including businesses) in scope of the Act to publish their modern slavery statement on the Government registry?

There are no obvious challenges associated with requiring organisations to publish their modern slavery statement on the Government Registry. They are already required to publish their reports on their own websites. Most statements are already collected either on the BHRRRC Modern Slavery Registry or on TISCRReport. The Registry would bring all published statements together in an accessible and consistent manner, facilitating comparability and accountability. Ideally companies should also include a link to their Modern Slavery Statement in their Annual Report to Companies House.

7) In addition to the ability to publish and view modern slavery statements, which features should a central registry should include?

We propose that a central registry should particularly include the following key features:

- A list of all organisations required to report
- A list of all organisations that have reported
- All statements published by each organisation (not just the most recent) – to allow visibility of how an organisation has progressed over several reporting cycles and to allow for organisations that prefer to publish a short annual update referring back to an earlier, more comprehensive statement if appropriate.
- Information on the size, type of business, sector, industry, and an enabled search function for comparability and benchmarking purposes.
- Guidance to help organisations improve their statements
- Guidance to help consumers (and investors, journalists, parliamentarians and others) evaluate the overall quality, strengths and weaknesses of a statement
- Statements available in html or plain text to facilitate text search, comparison and export

8a) Would establishing a single reporting deadline make the reporting process clearer for organisations captured by the legislation?

It was recognised that there would be some advantages to a single reporting deadline. A single reporting deadline would have several advantages:

- Ease of comparison if all statements for a given year are published together
- Increased media coverage and consumer scrutiny
- Potential for increased accountability

8b) What would be the challenges of publishing on a single reporting deadline, including any additional resource or cost implication?

Many ETI corporate members indicated that it could make their modern slavery reporting process more challenging. Their planning cycles for each year are based on their financial year end – with specific time frames for engagement with the Board and internal engagement, visits and monitoring their supply chains to identify, mitigate and manage risk, develop and get agreement for their reports. A single reporting deadline would disrupt a planning cycle that enables this work to be fully embedded in the business. Their concern is the risk of reducing the quality of reporting and the comprehensiveness of their business engagement and oversight process.

Other perceived challenges:

- A single deadline could lead to a flood of information in the public domain on modern slavery at only one time of the year
- If it is out of alignment with a company's financial reporting cycle, data available to inform the statement is likely to be less current, and may refer to events and policies more than a year old
- There are likely to be additional costs in time and resource for companies reporting outside of their normal annual reporting cycle

9) If a single reporting deadline is introduced, which annual date should be used?

No comment on specific date. See responses to (8) above, but possibly six months after the majority of companies' financial year end.

However, if a single deadline is not agreed, then quarterly / half-yearly dates could be mandated. Companies could state when they will report and those scrutinising statements can plan for this and hold those companies accountable if they do not report at the agreed times.

10a) Should any variable penalty for failing to publish a modern slavery statement or failing to publish a fully compliant statement be capped at a maximum prescribed amount?

No. A minimum penalty could be agreed, but there should be no maximum prescribed amount.

A civil penalty would drive accountability within businesses at a senior level; as such it is important that civil penalties are introduced to enforce Section 54. Financial penalties could be determined proportionate to the annual turnover of the company.

It is vital to increase the enforcement of Section 54, to ensure that companies not compliant with the law are held to account. There are several steps to this process:

- Collate and publish a list of organisations required to report
- Publish a list of those organisations that are currently non-compliant
- Ensure all organisations required to report are aware of their obligation to do so

Consideration should be given to whether a single penalty for non-compliance is appropriate or whether different penalties should be introduced for companies that do not produce a statement and companies that do report but fail to include one or more of the required areas of content.

'Naming and shaming' through the Register will also act as a deterrent for non-reporting. In most cases, being named publicly for non-reporting will risk companies' reputation and credibility with customers, investors and the general public.

10b) If yes, what do you think the maximum sum should be?

N/A

11) If the reporting requirements are extended to the public sector, should a civil penalty scheme also apply to public sector organisations?

Public sector organisations have different systems of governance, accountability mechanisms and budgetary pressures to the private sector. Whilst there is a clear case that public bodies should be subject to the same compliance requirements as the private sector, there were mixed views on whether penalties ought to be different to those applicable to the private sector. Some members that work with public bodies argue that holding senior officials accountable may be a more appropriate measure and that financial penalties may not be appropriate for the public sector, given the constraints on public funds and the concern that this could remove resources needed for frontline services.

11a) Should the requirement to publish a modern slavery statement be extended to large public sector organisations that are not currently captured by the legislation?

Yes.

11b) What would the benefits of extending the reporting requirements to large public sector organisations not currently captured by the legislation be?

Benefits would include:

- Levelling the playing-field: public sector organisations do in many cases share suppliers with private companies – it is unfair for the private companies to face different and more stringent transparency and reporting obligations in relation to those suppliers
- Including non-consumer-facing companies: public sector procurers have significant leverage over businesses who may not be consumer-facing, and so do not face the reputational pressure that is driving good practice among many larger retailers
- Leverage: public sector spending is significant and so there is considerable scope for leverage over the business practices of public sector suppliers – requiring large public sector organisations to report would be an important next step in mitigating the risk of modern slavery in supply chains

