



FINANCE AGAINST TRAFFICKING

Response To Modern Slavery Bill
Evidence Review



Thank you for the opportunity to respond to the consultation questions for implementing legislation to address human trafficking.

Finance against Trafficking is working with business to try and help them address how to manage the risk of human trafficking in their organizations and within their supply chains. It is commendable that the UK Government is considering implementing an Act to increase the transparency of private sector efforts to combat slavery, human trafficking, forced labour and the worst forms of child labour in business. Such an initiative will enable consumers and investors to make ethical choices and encourage companies to prioritise the prevention of human rights abuses in their supply chain. We do, however, have reservations about the questions that are raised below: we do not think that they properly address the issues for business and given the limited period to respond to the consultation we are not able to address some of the questions relating to the proposed legislation in as much detail as we think may be required.

We also suggest that:

- any new disclosure provisions required by companies on human trafficking in their organisation or supply chain should be considered alongside the recent changes to the Companies Act (Strategic Report and Director's Report) Regulations 2013 and the proposed EU Directive on mandatory reporting on non-financial issues for Companies
- the legislation is also written taking into account the recently launched 'Good Business' Business and Human rights Action plan by the government
- the provisions of the EU Directive 2001/36/EU on preventing and combating trafficking in human beings and protecting victims are taken into account when developing the Act.

Questions

Definition

1. How best should modern slavery be defined?

We propose that the fact is not termed a 'modern slavery act'. Our reasoning is as follows:

- Modern Slavery is emotive and inaccurate nomenclature in our view. Slavery was legal ownership of a person, whereas trafficking covers a myriad of issues, transport, abuse, denial of rights and securing an economic or other unfair advantage from the treatment of a trafficked person. With respect, they share common elements but are not the same. Each element of the offence may be perpetuated by different persons.
- We do understand the political advantages of such an emotive label but we are concerned that it will only lead to more confusion about the nature of this crime. We therefore propose that the term "Human TRAFFICKING" is used in the Act.
- There is an International law instrument that currently contains a definition of human trafficking, namely the Palermo Protocol. Article 3 (a) contains a complete definition of human trafficking



that can be summarized as the involuntary movement of persons for exploitation. We believe it is logical to implement internationally recognized definitions..

- We suggest that proper guidance is developed for companies on best practice for disclosure and management of their supply chains

Victims

2. What action do you think is most needed to improve the support and protection for adult victims of modern slavery?

3. What key measures do you think are needed to better protect child victims of modern slavery?

4. How can we best ensure that victims are not prosecuted for the crimes they are forced to commit?

5. Should there be a statutory duty to refer victims to the National Referral Mechanism, and what should a ‘successful’ referral facilitate?

A statutory duty may affect institutions and organizations where they come across victims of trafficking and it would be useful for business to have the opportunity to refer to this mechanism. We are not qualified to comment on what a ‘successful’ referral should facilitate

Criminals

6. What legislative changes must be enacted in order for prosecutions and convictions to be increased? Should the length of sentence for those found guilty be increased?

The penalties should be increased to such an extent that the risks become higher than any reward.

7. How far do you think the issuing of a ‘trafficking prevention order’ – enforcing restrictions on those who commit modern slavery offences – would act as a deterrent?

- Using ‘slavery’ and ‘trafficking’ interchangeably is confusing. One definition should be used. Business needs clarity on definitions for the purposes of certainty.



- The only deterrent for business will be either penalties in the form of fines, liability for directors, including imprisonment and potentially reputational damage in the form of ‘naming and shaming’. A ‘trafficking prevention order’ will only deter those committing the crime if there is proper enforcement and the risk of trafficking becomes higher than the rewards.
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- The national crime agency has some useful tools in place that should be considered . Furthermore, it is our view that IF TPO were made public (as are for FROs) then they would assist financial institutions in Customer Due Diligence and potentially help with locating hidden assets in cases where there has been confiscation proceedings (see for example <http://www.nationalcrimeagency.gov.uk/news-media/publications/10-ancillary-orders-may-2013/file>)

8. What action do you think is needed to better enable authorities to confiscate the assets of traffickers

Our sense from industry experts in this area is that confiscation is both legally and practically complex and it is hard to boil it all down to a few actions without proper analysis. If the government could engage practitioners and academia in an ongoing discussion, that would be helpful.

Anti-Slavery Commissioner

9. What three core powers do you think a new, independent Anti-Slavery Commissioner should possess? What should be the main focus of the role?

The role of an independent Anti-Slavery Commissioner will only be effective if he/ she can ensure that his department have the skills to support the role and enough powers to take enforcement action
What will be key will be:

- the powers the commissioner will have to hold institutions to account – the post needs teeth, the commissioner will need powers to act and compel action on human trafficking.
- reporting – specifically whether they report to government or parliament. While if the proposed commissioner reports to government they will be frequently called before various parliamentary committees to give account, its important they formally report to parliament. This is about parliament holding this key role to account and minimising the risk that a commissioner post becomes a ‘yes person’ to government.

Main focus of the role?

Ensuring compliance

10. How should British multinationals ensure that their supply chains are free from slavery?

The use of the term 'should' denotes a mandatory approach for business to ensure that their supply chains are free from slavery. We propose that a mandatory requirement should be combined with a 'risk based approach', similar to current requirements in the Financial Services sector and also in line with the 'comply or explain' approach that is found in the current disclosure requirements under the Companies Act. This presupposes a risk based approach for due diligence and monitoring compliance. A step forward will be a requirement on business to discuss their approach to mitigation of trafficking and forced labour risks etc in their annual report .

The question itself is one that is currently being asked by a number of companies that are taking a lead in this area, although it would appear that a large number of companies are not even thinking of these issues. The introduction of legislation may force more companies to look at the issues of potential human rights abuses more closely.

Arguably the UN Guiding principles for business and human rights has produced an internationally recognized framework to help business implement appropriate due diligence processes to tackle human rights and human trafficking in their supply chains. There are various means that a company can employ to address these issues:

- voluntary reporting on human rights issues in their supply chain
- in the case of listed companies, under current UK regulations, companies are obliged to report on human rights issues in their strategic report , including reporting on their policies and the effectiveness of these policies. This should lead to more transparency.
- ensuring that their supply contracts address human trafficking and that they have included termination clauses for breaches
- exercising due diligence within their own organisation and the organisation's supply chain to ensure that any subcontractors and suppliers are not in breach of human trafficking offences
- KYC and risk based due diligence by business in the financial sector
- training key staff on how to recognize and deal with these kind of issues
- government should also support business on these issues by ensuring that there is policy consistency across the UK Government and the UN Guiding principles (as mentioned in the BHR Action Plan)
- enlisting expert advice as required

Non-legislative actions

11. What areas of non-legislative activity do you see as a priority to run alongside the passage of the Bill?

Awareness raising and bespoke training to be offered to government departments from experts that understand the complexity of these issues, from both a legal and a commercial angle.

CSJ *'It Happens Here'* report

12. If you are familiar with the report, what do you believe to be the five most important recommendations that it put forward?

Not familiar with the report. The only question is whether the five recommendations will cover supporting a new Act to prevent human trafficking

Additional comments

13. In view of the need for a short, focused Bill, are there any additional key areas that you believe should be included?

There needs to be a provision on enforcement. Currently directors can be held liable for offences under the companies act relating to failure to produce a strategic report (that will, in the case of listed companies, include disclosures on human rights) but the whole issue of enforcement and whether this is addressed by the powers of a Commissioner should be addressed.

The second point that has to be considered is whether the Act will apply to All companies (except small companies) or whether it will only capture listed companies,
We would propose that at the very least large and listed companies should be caught by the Act or those with a turnover of a certain amount.

We would propose that simply 'lifting' the provisions of a similar act, like the California Act would be unwise. We include a letter previously addressed to Mr Blizzard, in his capacity as secretary to Mr Michael Connarty, setting out our previous comments on the 'anti-slavery bill' as it was proposed in 2012 and capturing our suggestions in relation to the California Transparency Supply Chain Act

Furthermore certainty in definitions, higher level of awareness and better international mutual legal assistance are key.

Yours sincerely

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Submitted on behalf of FAT