

# **Hardly Soft Law: The Modern Slavery Act 2015 and the Trend Towards Mandatory Reporting on Human Rights**

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## **Introduction**

Governments are increasingly imposing disclosure requirements on businesses in an effort to encourage practices that will help stamp out human rights abuses. Such transparency provisions are designed to improve access to information about what companies are doing (if anything) to identify and address the risks of human rights impacts that arise from business operations. The intention is to promote better accountability regarding the direct or indirect involvement of businesses in human rights abuses, and exert pressure on businesses to improve the efficacy of their efforts to tackle these issues.

A recent example of such transparency measures is the United Kingdom's Modern Slavery Act 2015 (MSA), a domestic measure with international reach. The section below outlines the requirements of the MSA and its policy objectives, and highlights some themes emerging from practice under the MSA to date. Through a comparison of the MSA with other similar measures, the article draws some conclusions on international policy trends relating to mandatory reporting measures. The section titled 'Tools to assist businesses

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in responding to mandatory human rights reporting requirements' reviews the United Nations Guiding Principles on Business and Human Rights (UNGPR) as a guide for businesses seeking to act in accordance with both the spirit and the letter of mandatory reporting requirements on human rights. Finally, the article considers some of the challenges and opportunities for businesses in this area, and the potential effectiveness of mandatory reporting requirements in promoting the protection of human rights.

### **UK Modern Slavery Act**

The objective of the MSA is to stamp out 'modern slavery', a term encompassing slavery, servitude, forced and compulsory labour, and human trafficking (referred to in this article as 'modern slavery'). Modern slavery is a worldwide problem on an enormous scale.<sup>1</sup> The MSA aims to improve UK law enforcement in the area by consolidating existing slavery-related criminal offences and increasing the penalties for committing offences. It also introduces new measures designed to provide the courts with tools to prevent modern slavery and to assist victims of such crimes, and establishes an Anti-Slavery Commissioner tasked with overseeing the prevention, detection, investigation and prosecution of offences. For businesses, a major innovation of the MSA has been the provision designed to promote 'transparency in supply chains' – a requirement for defined 'commercial organisations' to publish a statement of any steps they are taking to eliminate modern slavery in their business and supply chains (the 'reporting requirement').

When it began its legislative path, the initial Modern Slavery Bill (the 'Bill') contained no mention of transparency in supply chains,<sup>2</sup> despite recommendations to do so that emerged from an evidence review set up by the UK Government.<sup>3</sup> The inclusion of the reporting requirement was initiated by the Transparency in Supply Chains Coalition (among others)<sup>4</sup>

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1 Conservative estimates regarding the level of forced labour alone stand at 21 million; see 'Forced labour, human trafficking and slavery' (International Labour Organization) [www.ilo.org/global/topics/forced-labour/lang-en/index.htm](http://www.ilo.org/global/topics/forced-labour/lang-en/index.htm) accessed 20 October 2016. Other estimates consider the number living in slavery worldwide could be in excess of 45 million people; see 'Global Findings' (*The Global Slavery Index*) [www.globallslaveryindex.org/findings](http://www.globallslaveryindex.org/findings) accessed 20 October 2016. The UK Home Office estimated in 2013 that there were an estimated 10,000–13,000 people living in slavery in the UK. See UK Government, *Modern Slavery Strategy*, November 2014, 17.

2 Modern Slavery HC Bill (2014–15).

3 Modern Slavery Bill Evidence Review Panel, *Establishing Britain as a world leader in the fight against modern slavery: Report of the Modern Slavery Bill Evidence Review* (Modern Slavery Bill Evidence Review Panel, 16 December 2013), 14.

4 'Modern Slavery in Supply Chains' (MRS) Corporate Responsibility Coalition (CORE) <http://corporate-responsibility.org/issues/modern-slavery-bill> accessed 20 October 2016.

and gained the backing of prominent businesses and investors.<sup>5</sup> By the time it was passed into law, the MSA enjoyed support across all political parties, and was hailed by the UK Government as a ‘truly groundbreaking measure’.<sup>6</sup>

The mandatory aspects of the reporting requirement are quite limited. Nothing in the reporting requirement compels an organisation to take any action to address modern slavery, or to ensure that any steps taken are effective. Organisations need only report on steps they have taken, or state they have taken none. The policy objective of the reporting requirement is, however, broad, being to ‘require businesses to be transparent about what they are doing’ in order to increase supply chain accountability.<sup>7</sup> At the core of the UK Government’s approach is the notion that transparency will ‘create a level playing field’ between businesses that act responsibly and those that need to do more, and thereby ‘increase competition to drive up standards’.<sup>8</sup> In short, the UK Government seeks to promote the business case for identifying and addressing human rights risks.

### *A brief overview of the reporting requirement*

#### INTRODUCTION

The reporting requirement entered into force on 29 October 2015. As noted, its mandatory elements are minimal but its implications for business are potentially far-reaching since it applies to commercial organisations that do business in the UK even if they are incorporated or formed elsewhere. The potential application of the reporting requirement to multinational businesses (or parts of them) headquartered outside the UK can pose particular challenges, not least because interpretational uncertainties cloud its intended scope.

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5 IKEA, Tesco, Marks & Spencer (M&S), Amazon, Primark and Sainsbury’s all expressed support for legislation that was not ‘unduly burdensome’; see Joint Committee on the Draft Modern Slavery Bill, *Draft Modern Slavery Bill Report, Session 2013–4* (2013–14, HL 166, HC 1019) para 172.

6 See Home Office, ‘Transparency in Supply Chains etc. A practical guide (Guidance issued under section 54(9) of the Modern Slavery Act 2015)’ (UK Government, 29 October 2015) [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/471996/Transparency\\_in\\_Supply\\_Chains\\_etc\\_\\_A\\_practical\\_guide\\_\\_final\\_.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471996/Transparency_in_Supply_Chains_etc__A_practical_guide__final_.pdf) accessed 20 October 2016, 2 (referred to hereinafter as ‘Guidance’).

7 *Ibid.*

8 *Ibid.*

In summary, the reporting requirement requires a commercial organisation that carries on a business in the UK, has a total turnover in excess of £36m and supplies goods or services to publish a statement each financial year, stating the steps it has taken (if any) to ensure that slavery and human trafficking are not taking place in its business or in its supply chains. This section sets out a brief outline of each component of the reporting requirement and the government's expectations regarding its application, as reflected in statutory guidance issued by the Home Secretary under section 54(9) of the MSA (the 'Guidance').<sup>9</sup>

*COMMERCIAL ORGANISATION CARRYING ON A BUSINESS IN THE UK*

A 'commercial organisation' is defined in section 54(12) of the MSA as a body corporate (wherever incorporated) or a partnership (wherever formed) that carries on a business, or part of a business, in any part of the UK. As already noted, the reporting requirement is not limited in its application to entities incorporated or formed in the UK and, therefore, has the potential for extensive extraterritorial effect.

Neither the MSA nor the Guidance provides clarity around the tests for whether an organisation will be considered to carry on a business or part of a business in the UK for the purposes of the reporting requirement.<sup>10</sup> Ultimately, the courts will be the 'final arbiter' of this question, taking into account the particular facts in individual cases.<sup>11</sup> The Guidance suggests that a 'common sense' approach should be adopted.<sup>12</sup> Therefore, if an organisation does not have a 'demonstrable business presence in the UK', the Guidance states that it is unlikely to be considered to be carrying on a business in the UK. Further, a non-UK parent organisation should not be considered to carry on a business in the UK simply because it has a UK subsidiary 'since a subsidiary may act completely independently of its parent or other group companies'.<sup>13</sup>

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9 Guidance, see n 6 above.

10 The Bribery Act 2010 c 23, s 7(5)(a) contains a similar definition of 'commercial organisation' to the MSA. The Bribery Act is also supported by statutory guidance that provides similar guidance as to the proper interpretation of this phrase. However, to date, there have been no reported cases concerning this wording.

11 Guidance, see n 6 above, para 3.5.

12 *Ibid* para 3.6.

13 *Ibid* para 3.8.

*TURNOVER*

‘Turnover’ in the MSA refers to the total turnover of a commercial organisation and the turnover of any of its subsidiary undertakings (including those operating outside the UK).<sup>14</sup> Here, ‘turnover’ means the amount derived from the provision of goods and services falling within the ordinary activities of the organisation, after deduction of trade discounts, value added tax (VAT) and any other taxes based on the aforesaid amounts.<sup>15</sup> Subsidiaries do not have to take into account their parent organisations’ turnover when calculating their own turnover.

*SUPPLY OF GOODS OR SERVICES*

The MSA does not define ‘supplies goods or services’. The MSA also does not specify whether relevant goods and services must be supplied within the UK (or as part of the business undertaken by a commercial organisation within the UK).

*THE BUSINESS AND THE SUPPLY CHAIN*

Each commercial organisation subject to the reporting requirement is required to publish a statement setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in ‘any of its supply chains’ and in any part of its ‘own business’ (or stating that no steps have been taken).<sup>16</sup> The Guidance indicates that ‘supply chain’ has its ‘everyday meaning’ and should not be confined to first-tier suppliers.<sup>17</sup> In relation to what constitutes ‘own business’, there is no guidance on circumstances in which the activities of one entity within a corporate group are to be considered as part of a related group entity’s ‘own business’.

## CONTENT OF THE STATEMENT

The MSA sets out a non-exhaustive and non-mandatory list of the types of information that may be included in an organisation’s modern slavery statement, namely information regarding:

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14 Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015, SI 2015/1833, reg 3(1).

15 *Ibid* reg 3(2).

16 Modern Slavery Act 2015 c 30, s 54(4).

17 Guidance, see n 6 above, 32 and para 2.2.

- (a) the structure, business and supply chains of an organisation;
- (b) slavery and human trafficking policies;
- (c) due diligence processes in relation to slavery and human trafficking in an organisation's business and supply chains;
- (d) 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;
- (e) an organisation's 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
- (f) training about slavery and human trafficking made available to its staff.<sup>18</sup>

The Guidance indicates that it is 'up to organisations how they present information in the statement and how much detail they provide'.<sup>19</sup> The Guidance merely states that organisations *must* include in the statement all the steps they have taken and that statements should be 'credible and accurate'.<sup>20</sup> The Explanatory Notes to the MSA confirm that the UK Government expects that many businesses would choose to cover the areas listed in section 54 'and this in turn would make statements easier to assess and compare'.<sup>21</sup> However, an organisation can also make a statement that it has taken no steps at all to address human trafficking and slavery (if this is accurate), and satisfy the reporting requirement.

#### APPROVAL AND PUBLICATION OF THE STATEMENT

The statement must be approved by the board of directors and signed by a director if the organisation is a body corporate<sup>22</sup> or by the members, the general partner, or a partner (as applicable) if the organisation is a partnership.<sup>23</sup>

The statement must be published on the organisation's website if it has one, and a link to the statement must be included in a prominent place on the website's homepage.<sup>24</sup> The link should be clearly identifiable (the Guidance suggests the title 'Modern Slavery Act Transparency Statement' or similar).<sup>25</sup> The statement should be clearly written, and available in English and any other languages relevant to the organisation's supply chains.<sup>26</sup>

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18 Modern Slavery Act 2015 c 30, s 54(5).

19 Guidance, see n 6 above, para 4.2.

20 *Ibid* paras 2.3, 1.6.

21 Modern Slavery Act 2015 c 30, Explanatory Notes, part 6, para 254.

22 Modern Slavery Act 2015 c 30, s 54(6)(a).

23 *Ibid* s 54(6).

24 *Ibid* s 54(7).

25 Guidance, see n 6 above, para 8.3.

26 *Ibid* para 4.2.

## SANCTIONS

If a commercial organisation subject to the reporting requirement fails to publish a modern slavery statement, the Secretary of State may apply to court for injunctive relief compelling the organisation to comply.<sup>27</sup> Failure to comply with such an injunction would amount to a contempt of court and may result in an unlimited fine.

*Corporate responses to the reporting requirement*

The UK Government did not create a central repository for statements made pursuant to the reporting requirement, nor is there a formal mechanism to monitor and supervise compliance or undertake quality control. The Guidance warns that failure to comply with the reporting requirement, or making a statement that an organisation has taken no steps to combat modern slavery, may damage the reputation of the business, and notes that it will be for consumers, investors and non-governmental organisations (NGOs) to engage and/or apply pressure where they believe a business falls short.<sup>28</sup> The impact of the reporting requirement is therefore likely to depend, first and foremost, upon scrutiny by interested stakeholders rather than close monitoring and enforcement by government.

It has been estimated that around 17,000 companies are subject to the reporting requirement.<sup>29</sup> Under transitional provisions aimed at giving organisations time to prepare and therefore to make meaningful statements, the first commercial organisations required to report were those with a financial year end on or after 31 March 2016.<sup>30</sup> The Guidance indicates that organisations are expected to make statements within six months of an organisation's year-end.<sup>31</sup> In practice this affords commercial organisations the opportunity to align reporting under the MSA with other corporate reporting carried out on an annual basis. It also means that a significant number of commercial organisations with a financial year ending on 31 December 2016 may wait until June 2017 before publishing a statement. Given that relatively few organisations have reported under the MSA so far, information shedding light on corporate reporting practices is sparse. Nevertheless, it is possible to make preliminary observations on some emerging themes.

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27 Modern Slavery Act 2015 c 30, s 54(11).

28 Guidance, see n 6 above, para 2.8.

29 'New duty puts onus on big businesses to improve transparency in supply chains' (UK Government, 29 October 2015) [www.gov.uk/government/news/new-duty-puts-onus-on-big-businesses-to-improve-transparency-in-supply-chains](http://www.gov.uk/government/news/new-duty-puts-onus-on-big-businesses-to-improve-transparency-in-supply-chains) accessed 20 October 2016.

30 The Modern Slavery Act 2015 (Commencement No 3 and Transitional Provision) Regulations 2015, SI 2015/1816 C.113, reg 3.

31 Guidance, see n 6 above, para 6.4.

First, it is evident that organisations are reporting. The Business & Human Rights Resource Centre (BHRRC) registry indicates that as of 20 October 2016, over 800 organisations had issued statements, which have been collated by the online registry.<sup>32</sup> Although the majority of statements are being made by organisations either based in the UK, or by the UK subsidiaries of non-UK companies, organisations based outside the UK in jurisdictions such as Australia, Canada, Denmark, France, Germany, India, Ireland, Japan, Kuwait, the Netherlands, Norway, Singapore, South Africa, Sweden, Thailand and the United States are also issuing statements.<sup>33</sup> In terms of industry spread, the BHRRC registry includes statements from diverse businesses across a range of sectors including the extractives and energy sectors, banking and other financial services, professional services, services in general, transport, telecommunications, health, agriculture, construction, manufacturing, real estate, transport, consumer goods and utilities.<sup>34</sup> Even at this early stage, the relatively small number of statements included in the BHRRC registry may indicate some level of non-reporting by commercial organisations subject to the reporting requirement. It is possible that some simply are not aware of the reporting requirement or that it applies to them.

Secondly, there is a spectrum of approaches within the statements published to date. Early analyses by NGOs and other commentators concluded that many statements failed to comply with the MSA's mandatory requirements either because they had not been signed by a director or equivalent, and/or the statement was not available in a prominent place on the organisation's website.<sup>35</sup>

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32 'UK Modern Slavery Act & Registry' (Business & Human Rights Resource Centre) <https://business-humanrights.org/en/uk-modern-slavery-act-registry> accessed 20 October 2016.

The registry has been tracking the publication of statements since February 2016. The registry also includes statements that are submitted to the registry, which is updated daily.

33 *Ibid.* This country and sector analysis is based on a review of the statements publicly available on the BHRRC registry as at 20 October 2016.

34 *Ibid.*

35 In a report drawn up in March 2016 (before the reporting requirement took effect), the Business & Human Rights Resource Centre and the CORE Coalition identified that only 22 of 75 statements reviewed were both (a) signed by a director or equivalent; and (b) if the organisation has a website, made available in a prominent place on the organisation's website, as required by the legislation. See Business & Human Rights Resource Centre and the CORE Coalition, 'Register of slavery & human trafficking corporate statements released to date to comply with UK Modern Slavery Act' (Business & Human Rights Resource Centre) [http://business-humanrights.org/sites/default/files/documents/CORE%20BHRRC%20Analysis%20of%20Modern%20Slavery%20Statements%20FINAL\\_March2016.pdf](http://business-humanrights.org/sites/default/files/documents/CORE%20BHRRC%20Analysis%20of%20Modern%20Slavery%20Statements%20FINAL_March2016.pdf) accessed 20 October 2016, 1 (BHRRC/CORE Report). In a review by the Business & Human Rights Resource Centre of 27 statements published by the Financial Times Stock Exchange (FTSE) 100 companies, only 15 (or 56 per cent) of the statements reviewed were deemed to 'fully and explicitly' comply with the mandatory requirements of the MSA; see: Business & Human Rights Resource Centre, 'FTSE 100 at the starting line: An analysis of company statements under the UK Modern Slavery Act', Business & Human Rights Resource Centre, October 2016), 2, <https://business-humanrights.org/en/msa-briefing> accessed 20 October 2016 (BHRRC FTSE 100 Report).



It is perhaps unsurprising that there is great variety in terms of content and length of statements, but notable that few early statements cover all six of the areas of information suggested by section 54(5) of the MSA with a tendency not to detail organisations' risk assessments or identify any key performance indicators used to assess the effectiveness of steps taken to combat modern slavery.<sup>36</sup>

For those organisations whose statements do not address the six areas, it may be that they have yet to implement proper policies and processes to tackle modern slavery issues and there are accordingly limited 'steps' they can refer to in their first statements. The Guidance foresees that organisations will build on their statements year on year and that they will evolve and improve over time. For those companies that have considered the existence of modern slavery in their supply chain, it appears that many would conclude that there is a likelihood of modern slavery occurring at some stage, particularly in high-risk countries or sectors and at the lower stages of the chain.<sup>37</sup> The government's objectives will be met in part if those organisations now translate those concerns into more effective steps aimed at addressing these risks, and disclose them.

A small proportion of organisations publishing statements to date are identified as covering all of the areas suggested by the MSA. These include prominent multinationals with a history of reporting on human rights and other non-financial issues on a voluntary basis; and which have made public commitments to international standards providing guidance on governance and reporting on these issues, such as the UNGP.<sup>38</sup> It seems likely that

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36 The BHRRC/CORE Report reviewed 83 statements and identified that only 19 organisations had covered the six areas that s 54 suggests may be addressed in a statement. Further, the BHRRC/CORE Report concluded that only nine organisations reported on these areas in addition to complying with the two mandatory parts of the reporting requirement (relating to signature of the statement, and its publication in a prominent place on the organisation's website); see BHRRC/CORE Report, n 35 above, 1. These conclusions are reinforced by a report by Ergon Associates, which found that most of the 239 statements it reviewed did not provide much detail on identified risks within the business and its supply chain, priorities for action or on key performance indicators used to assess effectiveness of a company's anti-slavery position. For example, 35 per cent of statements said nothing on the question of the organisations' risk assessment processes; see 'Reporting on Modern Slavery: The current state of disclosure – May 2016' (Ergon Associates) [www.ergonassociates.net/images/stories/articles/ergonmsastatement2.pdf](http://www.ergonassociates.net/images/stories/articles/ergonmsastatement2.pdf) accessed 20 October 2016, 1.

37 Ethical Trading Initiative (ETI) and Ashridge, *Corporate Approaches to addressing modern slavery in supply chains: A snapshot of current practice* (Ashridge Executive Education at Hult International Business School 2015), 8.

38 For example, Nestlé adopted the UNGP in 2011 and the UNGP Reporting Framework in 2015. Nestlé SA is incorporated in Switzerland and has a subsidiary in the UK in addition to a number of parent and sister companies. Nestlé reported under the MSA in September 2016, providing information under each of the categories suggested by the MSA.

these organisations' modern slavery statements were facilitated by existing processes and frameworks.

Thirdly, whether companies adopt a 'bare minimum' approach to compliance with the MSA, or elect to provide information under each of the headings suggested in the MSA, the quality of statements is also being closely scrutinised. One recent review of 27 statements by FTSE 100 companies concluded that there has been, so far, a 'generally poor standard of statements'.<sup>39</sup> It may be significant that those companies identified by the review as providing examples of good practice have also implemented human rights focused approaches such as the UNGP into their policies and processes.<sup>40</sup>

Lastly, though the quality of the information provided in many statements and the degree of transparency offered have been criticised, it is nevertheless suggested that the reporting requirement is driving clear and tangible changes in corporate approaches to modern slavery risks. It appears that companies are not only taking steps to identify and manage modern slavery risks where they had not done so before, but such risks are being taken seriously at the board level, with directors being more engaged in the issues than was previously the case.<sup>41</sup> It seems reasonable to expect that these developments will be reflected more broadly within organisations' appreciation and management of human rights risks generally and not be confined to modern slavery.

#### *Proposed reform of the reporting requirement*

Although the MSA only came into effect in October 2015, legislative amendments have already been proposed. This indicates that the UK Government is looking to move towards greater transparency and

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39 BHRRC FTSE 100 Report, see n 35 above, 2 and 13; Ergon Associates and Historic Futures, 'Has the Modern Slavery Act had an impact on your business?' (Ergon Associates and Historic Futures, October 2016), conclusion, <https://business-humanrights.org/sites/default/files/documents/msa-report-ergon-oct2016.pdf> accessed 20 October 2016.

40 The BHRRC FTSE 100 Report, see n 35 above, identified the M&S group as one of two of the highest-performing companies considered for the report. In June 2016, M&S published a statement under the MSA that complies with the minimum requirements under the MSA and provides information under each suggested category. In the same month, M&S issued a human rights report in line with the UNGP Reporting Framework, which sets out M&S's commitment to the UNGP. SABMiller (recently acquired by Ab InBev) was ranked as highly as M&S in the BHRRC FTSE Report even though BHRRC found that not all the minimum requirements had been met. SABMiller (now Ab InBev) also has a human rights policy and processes in place that reflect the UNGP.

41 Ergon Associates and Historic Futures, see n 39 above, 3 and BHRRC FTSE 100 Report, see n 35 above, 1.

accountability in this area. The Modern Slavery (Transparency in Supply Chains) Bill,<sup>42</sup> currently passing through the House of Lords, proposes four key amendments to the MSA:

1. 'public bodies' (although not expressly excluded from the MSA) should be subject to the reporting requirement;
2. all entities caught by the reporting requirement should include their modern slavery statement in their annual reports and accounts;
3. the government should produce a list of those commercial organisations bound to publish a statement, categorised by sector; and
4. 'contracting authorities' (including state, regional or local authorities and bodies governed by public law) should be required to exclude 'economic operators' from procurement procedures if they are subject to the reporting requirement but have failed to issue a modern slavery statement.

### **Trends in mandatory transparency legislation**

The MSA is one in a series of mandatory reporting requirements brought into force in recent years as governments move towards greater transparency in the disclosure of non-financial information. We consider a few of these in this section.

#### *The United States*

The California Transparency in Supply Chains Act 2010<sup>43</sup> (CTSCA) served as a model for the MSA. In contrast to the MSA (which applies to commercial organisations in any sector that satisfy the applicable criteria), the CTSCA applies only to retail sellers and manufacturers if they do business in the state of California and have annual worldwide gross receipts exceeding US\$100,000. The CTSCA requires such retail sellers and manufacturers to report (on their websites, accessible by a 'conspicuous' link) on their efforts to eradicate slavery and human trafficking from their direct supply chain for tangible goods offered for sale. The Attorney-General of California may seek an injunction in instances of non-compliance. While a report published pursuant to the CTSCA must address 'to what extent, if any' an organisation has engaged in five specific areas of activity, and there are certain minimum disclosure requirements within each topic, there is otherwise a great deal of flexibility with respect to the content of statements.

42 Modern Slavery (Transparency in Supply Chains) Bill (HL) (2016–17), [www.publications.parliament.uk/pa/bills/lbill/2016-2017/0006/17006.pdf](http://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0006/17006.pdf) accessed 20 October 2016.

43 State of California, 'California Transparency in Supply Chains Act 2010' [www.state.gov/documents/organization/164934.pdf](http://www.state.gov/documents/organization/164934.pdf) accessed 20 October 2016.

As with the MSA, an organisation may disclose that it has done nothing and still comply with the CTSCA. A resource guide published by the Attorney-General of California three years after the CTSCA came into force (the 'CTSCA Guidance') provides guidance and examples of model disclosures inspired by real-life examples.<sup>44</sup> The guidance aims to assist companies to develop processes that comply with both the 'letter and legislative intent' of the CTSCA and emphasises that effective disclosures are not those that simply comply with the CTSCA, but those that help to educate the public about the integrity of companies' supply chains.<sup>45</sup>

At the US federal level, amendments to the Federal Acquisitions Regulation (FAR) were brought in by a final rule, which took effect on 2 March 2015 (the 'Final Rule') and which aims to strengthen government procurement requirements in relation to human trafficking and forced labour risks.<sup>46</sup> The FAR now prohibits a wider range of human trafficking-related activities in government contracts and tenders.<sup>47</sup> In addition, contractors and subcontractors providing supplies acquired abroad where the value of the overseas part of the contract exceeds US\$500,000 must now develop and implement a compliance plan appropriate to the size and complexity of the contractor's business and the nature and scope of its activities for the government. The plan should ensure that the prohibited activities do not occur, and provide remedies when they do. Relevant parts of the plan must be posted on the company's website. These contractors must also submit an annual certificate to the government's contracting officer confirming, among other things, that to the best of the contractor's knowledge and belief, after having carried out due diligence, neither the contractor 'nor any of its agents, subcontractors, or their agents' is engaged in FAR-prohibited activities or that appropriate actions have been taken where abuses are found.<sup>48</sup> Although certification is mandatory, like the MSA and CTSCA, the FAR leaves room for the contractor to exercise a degree of

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44 Attorney-General California Department of Justice, 'The California Transparency in Supply Chains Act, A Resource Guide', California Department of Justice 2015), <https://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf> accessed 20 October 2016, 1.

45 *Ibid* 23.

46 Amendments were introduced to subparts 22.1700 and 52.222-50 of the FAR as published in the 'Federal Register, Vol 80, No 19, 29 January 2015, Rules and Regulations' (US Government Publishing Office) [www.gpo.gov/fdsys/pkg/FR-2015-01-29/pdf/2015-01524.pdf](http://www.gpo.gov/fdsys/pkg/FR-2015-01-29/pdf/2015-01524.pdf) accessed 20 October 2016 (the Final Rule).

47 Prohibited activities now include the destruction of employees' identification or immigration documents, charging employees fees for their own employment and providing housing that fails to meet legal safety standards. See the Final Rule, n 46 above.

48 See the Final Rule, n 46 above, 4987-4988 and ss 22.1703(c), 52.222-50(h)(5)(ii) and 52.222-56.

discretion in respect of the scope of its compliance plan and the level of due diligence that it carries out prior to certification.<sup>49</sup> Commentary provided in the Final Rule notes that the level of due diligence the contactor undertakes 'is a business decision, requiring judgment by the contractor'.<sup>50</sup> Although not reporting of the type required by the MSA or CTSCA, the compliance plan offers transparency around steps taken in relation to forced labour and labour risks, and the certification requirement goes further in seeking to assure the efficacy of such steps.

Another example of transparency legislation was the requirement that US entities and persons making new investments in Burma exceeding US\$500,000 in aggregate should submit an annual report to the US State Department (the 'Burma reporting requirement').<sup>51</sup> This was introduced in July 2012 by the Office of Foreign Assets Control (OFAC) as part of a general licence authorising previously sanctioned trade with Burma. Although a lifting of US sanctions relating to Burma in October 2016 led to the Burma reporting requirement becoming voluntary,<sup>52</sup> the previously mandatory elements included providing details of due diligence procedures (including those relating to risk and impact assessment) relating to human rights, workers' rights or environment impacts connected to the investor's operations and supply chain in Burma. The Department of State 'uses the information collected as a basis to conduct informed consultations with US businesses to encourage and assist them to develop robust policies and procedures to address a range of impacts resulting from their investments and operations with Burma', to 'empower civil society to take an active role in monitoring investment in Burma and to work with companies to promote investment that will enhance broad-based development and reinforce political and economic reform'.<sup>53</sup> As with the MSA and CTSCA, an organisation was able to disclose that it had not put in place any due diligence processes and still be in compliance with the requirement. Failures to report attracted a potential fine of the greater of US\$250,000 or twice the value of the transaction.

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49 See the Final Rule, n 46 above, 4970.

50 *Ibid.*

51 'Reporting Requirements on Responsible Investment in Burma' OMB no 1405-0209. In addition, those contracting with or exercising rights under contracts with the Myanmar Oil and Gas Enterprise must notify the Department of State. See 'Responsible Investment Reporting Requirements' (humanrights.gov) [www.humanrights.gov/wp-content/uploads/2013/05/responsible-investment-reporting-requirements-final.pdf](http://www.humanrights.gov/wp-content/uploads/2013/05/responsible-investment-reporting-requirements-final.pdf) accessed 20 October 2016.

52 US Treasury Department Office of Public Affairs, 'Treasury Implements Termination of Burma Sanctions Program' (US Department of the Treasury, 7 October 2016) [www.treasury.gov/resource-center/sanctions/Programs/Documents/burma\\_fact\\_sheet\\_20161007.pdf](http://www.treasury.gov/resource-center/sanctions/Programs/Documents/burma_fact_sheet_20161007.pdf) accessed 20 October 2016.

53 'Reporting Requirements' (Embassy of the US Rangoon Burma) <https://burma.usembassy.gov/reporting-requirements.html> accessed 20 October 2016.

*Europe*

Similar mandatory reporting requirements are being introduced in jurisdictions across the Atlantic. For example, by the end of 2016, all European Union (EU) Member States will be required to transpose the non-financial reporting directive on disclosure of non-financial and diversity information (the 'EU NFRD')<sup>54</sup> into national law. The NFRD amends the Accounting Directive,<sup>55</sup> which already requires European companies in the extractive industries and forestry to disclose in their financial statements payments made to governments. The new requirement introduced by the NFRD applies to large undertakings that are considered to be public-interest entities and public-interest entities that are parent undertakings of a large group, in each case, having an average number of employees in excess of 500 (on a consolidated basis for groups). Undertakings subject to the NFRD must provide a statement in their management report on non-financial matters (at a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery) to the extent necessary for an understanding of the undertaking's development, performance and position and of the impact of its activity on such matters. The requirement is likely to capture entities that are of significant public relevance because of the nature of their business, size or corporate status, such as banks and insurance companies. The EU NFRD is much broader in scope than the MSA and CTSCA, extending beyond disclosures about modern slavery. However, like the MSA and CTSCA, it is not prescriptive as to content and leaves considerable flexibility for the relevant undertakings to decide what information and level of detail it considers 'necessary' for an understanding of the matters in question.

The UK already has a similar corporate reporting requirement. UK incorporated public companies with a premium listing of shares on the Main Market of the London Stock Exchange are required to comply with certain non-financial reporting and disclosure requirements set out in the Companies Act 2006, which, since 2013, includes the publication of a strategic report containing a fair review of the company's business and a description of the principal risks and uncertainties facing the company.<sup>56</sup> Where necessary for an understanding of the development, performance and position of the group's business, the strategic report must also include

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54 Council Directive 2014/95/EU of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, 2014 OJ L330/1 (the EU NFRD).

55 *Ibid.*

56 Section 414A Companies Act 2006 c 46 as inserted by the Companies Act 2006 (Strategic Report and Director's Report) Regulations 2013.

details of the main trends and factors likely to affect the future development and position of the business and information about environmental matters (including the impact of the group's business on the environment), the group's employees and social, community and human rights issues. In a similar vein to the EU NFRD, the legislation is not prescriptive and provides companies subject to this reporting requirement with the flexibility to determine that they need not report on such non-financial matters (because unnecessary for the relevant understanding); and if they do report, what information they provide. The Financial Reporting Council, a standard setting body that aims to promote good governance and reporting to foster investment, issued non-mandatory guidance to support the new requirement at the government's request in 2014 ('FRC Guidance').<sup>57</sup> The FRC Guidance takes a principles-based approach and aims to assist reporters to prepare fair, balanced and understandable reporting while encouraging them to be 'innovative with the presentation of narrative information while remaining in the regulatory framework'.<sup>58</sup>

#### *Trends and future developments*

These reporting mechanisms differ in scope and purpose and carry different types and degrees of enforcement consequences. However, there are commonalities. Through the medium of a public report or statement, each requires disclosure of an organisation's approach to human rights issues with the aim of improving transparency and accountability. This trend looks set to continue. At a policy level, governments worldwide are developing national action plans on business and human rights and a number of governments have committed to implement reporting requirements on human rights issues.<sup>59</sup>

New measures on the horizon include the US Business Supply Chain Transparency on Trafficking and Slavery Act, which was introduced in the US House of Representatives in July 2015.<sup>60</sup> If passed in its current form, the legislation would amend the Securities Exchange Act of 1934, and would be

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57 Financial Reporting Council, *Guidance on the Strategic Report* (The Financial Reporting Council Limited 2014) (the FRC Guidance).

58 *Ibid* 5.

59 'National Action Plans on Business and Human Rights' (Clifford Chance, Global Business Initiative for Human Rights, October 2015) para 6, [www.cliffordchance.com/briefings/2015/10/national\\_action\\_plansonbusinessandhuma.html](http://www.cliffordchance.com/briefings/2015/10/national_action_plansonbusinessandhuma.html) accessed 20 October 2016.

60 US House of Representatives, 'Business Supply Chain Transparency on Trafficking and Slavery Act of 2015' (HR 3226, 114th Congress (2015–16)) [www.congress.gov/bill/114th-congress/house-bill/3226/text](http://www.congress.gov/bill/114th-congress/house-bill/3226/text) accessed 20 October 2016. An identical bill was introduced to the Senate in August 2015 (S 1968, 114th Congress (2015–2016)) [www.congress.gov/bill/114th-congress/senate-bill/1968/text](http://www.congress.gov/bill/114th-congress/senate-bill/1968/text) accessed 20 October 2016.



similar to the CTSCA in requiring mandatory reporting on modern slavery through disclosure on a website, but it would apply across all sectors of commercial activity and throughout the US to those companies required to report to the US Securities and Exchange Commission.

It is evident that corporate reporting requirements are emerging as a policy tool of choice for governments. Such requirements allow them to be seen to be taking action to drive transparency and accountability, while placing a minimal burden on governmental resources. This approach places the onus on the reporting company to develop policies and processes that permit compliance; and the quality of information and the behaviour it discloses are to be judged, in the main, in the court of public opinion. The trend towards corporate reporting requirements has paved a clear path for civil society to police the business response. The policy objective is that market forces and public scrutiny will drive behaviours that promote responsibly business and respect for human rights.

Businesses can use reporting requirements as an opportunity to improve internal governance and demonstrate this to stakeholders; but must take care that the pressure to publicise positive behaviours does not encourage exaggerated, inaccurate or misleading statements of their performance. The risks that disclosure can entail are evident. In relation to modern slavery issues, civil society scrutiny of companies' reporting has already ranged from investigative journalism<sup>61</sup> to litigation. Although no claim has yet succeeded, several have been brought against companies based on alleged failures to disclose labour issues in their supply chains when reporting under the CTSCA and/or claims that statements published by the companies publicly are false and misleading or violated consumer protection laws.<sup>62</sup> Strategic litigation of this kind is likely to continue.

There are also signs that the legal duties on businesses may expand in scope. The various reporting requirements and, in particular, measures such as the MSA and CTSCA drive a recognition among affected businesses that due diligence is necessary to identify human rights risks, address those risks and then disclose what has been done. Pressure is mounting internationally for states to move a step further by positively requiring businesses to conduct

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61 In February 2016, *The Guardian* reported that Nestlé had admitted slavery in its seafood chains in Thailand while leaving unaddressed child slavery issues in relation to cocoa in the Ivory Coast. See Annie Kelly 'Nestlé admits slavery in Thailand while fighting child labour lawsuit in Ivory Coast' [www.theguardian.com/sustainable-business/2016/feb/01/nestle-slavery-thailand-fighting-child-labour-lawsuit-ivory-coast](http://www.theguardian.com/sustainable-business/2016/feb/01/nestle-slavery-thailand-fighting-child-labour-lawsuit-ivory-coast).

62 For example, *Laura Dana v The Hershey Company et al*, 3:2015cv04453; *McCoy v Nestle USA, Inc et al*, 3:2015cv04451; *Hodsdon v Mars, Inc et al*, 4:2015cv04450; *Sud v Costco Wholesale Corp*, 15-cv-03783, US District Court, Northern District of California (San Francisco); *Barber v Nestlé USA, Inc*, No 15-01364-CJC (CD Cal 9 December 2015).



human rights due diligence. Indeed, a bill currently under consideration by the French parliament would impose a duty of care (*devoir de vigilance*) on certain large companies to take active steps to identify and prevent infringements to human rights, serious injuries, environmental harms or health risks, as well as passive or active corruption, resulting directly or indirectly from a company's activities (including those of the companies that it controls) and its business relationships.<sup>63</sup>

In the light of this evolving regulatory landscape, it would be prudent for businesses to consider the adequacy of their existing policies and processes to assess how well positioned they are to meet new requirements to report on their record of addressing their human rights risks. Businesses that anticipate the proposed changes and prepare accordingly will be a step ahead. It would seem that there is an appetite to accept this challenge. More and more businesses are adopting human rights commitments and even see increasing legislation on human rights as an opportunity rather than a risk.<sup>64</sup>

### **Tools to assist businesses in responding to mandatory human rights reporting requirements**

#### *The UNGP*

The primary reference tool for businesses seeking to understand the context within which to meet new requirements to report on their record of addressing their human rights risks are the UNGP. Unanimously endorsed by the UN Human Rights Council in 2011,<sup>65</sup> the UNGP explain the responsibilities of businesses with respect to human rights and how

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63 Sénat, France 'Proposition de loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre' *Texte No 1 (session ordinaire 2016–2017)*. On 13 October 2016, the Senate accepted a modified text of the proposed law first submitted to it for consideration by the National Assembly in March 2015. The proposed legislation awaits consideration by a mixed committee of members from the National Assembly and the Senate. See 'Proposition de loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre' No 496 (Sénat, France) [www.senat.fr/dossier-legislatif/pp14-376.html](http://www.senat.fr/dossier-legislatif/pp14-376.html) accessed 20 October 2016.

64 In a survey of 275 senior in-house counsel across a range of industry sectors, 46 per cent of respondents' organisations had made public commitments to respect human rights. The majority of these public commitments took the form of a general code of conduct, as opposed to a formal policy or a more specific code. When asked how they view the growing momentum for international and national standards and legislation on human rights for their organisation, 66 per cent saw this as an 'opportunity' rather than a risk. See James Wood, 'Soft law, hard sanctions – Human rights laws and the next risk front facing business' (*Legal Business*, 2 September 2016) [www.legalbusiness.co.uk/index.php/analysis/7353-soft-law-hard-sanctions](http://www.legalbusiness.co.uk/index.php/analysis/7353-soft-law-hard-sanctions) accessed 20 October 2016.

65 A/HRC/RES/17/4.

they may be operationalised.<sup>66</sup> Though not legally binding, the UNGP are internationally recognised as ‘the key global normative framework for business and human rights’,<sup>67</sup> and many leading businesses have publicly committed to align with them.<sup>68</sup>

The framework underpinning the UNGP emphasises that states have a legal duty to protect against human rights abuse, including by business enterprises. This includes taking appropriate measures to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication. Mandatory reporting requirements are seen by some governments as part of their toolkit to discharge this duty.

The UNGP also make clear that all business enterprises have a responsibility to respect human rights and that victims of human rights abuses have the right to a remedy for the negative impacts that they suffer.<sup>69</sup> At the heart of the corporate responsibility to respect human rights is the principle that companies should avoid causing or contributing to adverse human rights impacts through their own activities and seek to mitigate adverse impacts that are directly linked to their operations, products or services by their business relationships. Businesses should both ‘know and show’<sup>70</sup> that they are respecting human rights by:

1. adopting a human rights policy and implementing it throughout the business;
2. carrying out due diligence to identify, prevent, mitigate and account for how the business addresses any adverse human rights impacts associated with its activities or business relationships; and
3. having processes to enable the remediation of any such impacts where appropriate.<sup>71</sup>

It is notable that the due diligence process envisaged by the UNGP is distinguishable from due diligence more typically encountered by businesses

66 For a detailed analysis of the UNGP and their application to one business sector, see Rae Lindsay and Robert McCorquodale et al, ‘Human rights responsibilities in the oil and gas sector: applying the UN Guiding Principles’ (2013) 6(1) *Journal of World Energy Law and Business* 2.

67 Office of the UN High Commissioner for Human Rights (OHCHR), *Frequently Asked Questions about the Guiding Principles on Business and Human Rights* (UN, October 2014), 1.

68 Companies worldwide from ABN Amro, AkzoNobel, Marubeni, Monsanto, Standard Chartered, Tesco and Volvo have committed to implement the UNGP. See ‘Companies polices: General’ (Business & Human Rights Resource Centre) [www.business-humanrights.org/en/company-policysteps/policies/company-policies-general](http://www.business-humanrights.org/en/company-policysteps/policies/company-policies-general) accessed 20 October 2016.

69 UN Special Representative for Business and Human Rights, ‘Protect, Respect and Remedy: a Framework for Business and Human Rights’ (7 April 2008) UN Doc A/HCR/8/5, para 9.

70 OHCHR, ‘Guiding Principles on Business and Human Rights’ (2011) UN Doc HR/PUB/11/04, para 15.

71 *Ibid*, paras 16–22.

in a number of ways. First, the due diligence should focus on the risk of impacts to others rather than on risks to the business itself. Secondly, the scope of the diligence does not end at risk identification, but encompasses the prevention and mitigation of such risks. It also involves the communication (including through public reporting) of the results of due diligence to relevant stakeholders.<sup>72</sup> This process of external communication is central to enabling transparency and accountability.<sup>73</sup>

### *The UNGP reporting framework*

Many businesses look to the UNGP Reporting Framework (the ‘Reporting Framework’) for guidance on how they should go about reporting on non-financial matters throughout their operations and value chains. The Reporting Framework helps apply the UNGP and the principles of due diligence to such efforts. It is ‘user-friendly’, explaining how any business, regardless of size or sector, can report on human rights issues in a coherent way based on eight overarching questions.

The questions work around a central theme of a company’s ‘salient’ human rights issues. The term ‘salient’ is used to describe those human rights that are at risk of the most severe negative impact through a company’s activities or business relationships. The questions cover the governance aspects of the respect for human rights, the management of salient human rights issues and define the focus of reporting. The Reporting Framework also offers companies detailed guidance on how to answer the questions with relevant information about their human rights policies, processes and performance.

Like the UNGP themselves, the Reporting Framework has no formal legal status. Nevertheless, there are early indications that it may become a benchmark standard for reporting on business and human rights matters, with a number of influential companies across different industries already adopting the Reporting Framework and many others expected to follow suit.<sup>74</sup> Further, a number of major investors, with US\$4.8tn assets under management, have supported the Reporting Framework referring to it as ‘an essential tool’ that

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72 See generally *ibid*, paras 17–21 and OHCHR, ‘The Corporate Responsibility to Respect Human Rights: An Interpretative Guide’ (2012) UN Doc HR/PUB/12/02, 6–7, 31–63.

73 Human rights due diligence also is not a ‘one-off’ process, but instead an iterative one, reflecting the potential for human rights risks to arise at many points during the life of a business, such as entering a new business relationship, making a new investment or launching a new product.

74 Unilever (the first adopter), Ericsson, H&M, Nestlé and Newmont.

enables investors to review companies' understanding and management of human rights risks, and guides their engagement with companies.<sup>75</sup>

Lastly, the Reporting Framework identifies the relationship between the Reporting Framework and other key reporting initiatives such as the Global Reporting Initiative's G4 Framework, thereby assisting businesses in addressing their various reporting requirements and initiatives consistently.<sup>76</sup>

Accordingly, while it remains to be seen to what extent national and international developments will converge around the Reporting Framework there are promising signs that by bringing together the key reporting guidance initiatives into one single framework focused on salient human rights issues, the Reporting Framework is well placed to form a common standard to be widely adopted by businesses and key stakeholders, including investors. On this basis, businesses might find themselves taking steps to address human rights issues in ways comparable to their peers. It may also offer a coherent basis from which to meet the challenges of differently focused reporting requirements emanating from a variety of jurisdictions and demanding a miscellany of information.

#### *Effecting change through a smart mix of measures*

The principles of due diligence and transparency underpinning the UNGP and Reporting Framework offer guidance to businesses seeking to respond to mandatory reporting requirements such as those examined in this article. In this regard, 'soft law' such as the UNGP can be instrumental in facilitating meaningful compliance with 'hard law' requirements, including by promoting the policy objectives underlying the regulatory measures. This has been acknowledged, expressly or implicitly, in the context of some of the measures that have been discussed.

For example, while the records of the MSA's passage through parliament do not disclose whether the UK Government regarded the reporting requirement as a specific opportunity to progress the

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75 Shift, Mazars, 'UN Guiding Principles Reporting Framework Investor Statement' (UN Guiding Principles Reporting Framework, May 2016) [www.ungpreporting.org/early-adopters/investor-statement](http://www.ungpreporting.org/early-adopters/investor-statement) accessed 20 October 2016.

76 Shift, Mazars, 'UN Guiding Principles Reporting Framework with implementing guidance' (UN Guiding Principles Reporting Framework) [www.ungpreporting.org/wp-content/uploads/2015/02/UNGGuidingPrinciplesReportingFramework\\_withimplementationguidance\\_Feb2015.pdf](http://www.ungpreporting.org/wp-content/uploads/2015/02/UNGGuidingPrinciplesReportingFramework_withimplementationguidance_Feb2015.pdf) accessed 20 October 2016, 14.

implementation of the UNGP,<sup>77</sup> when it came to public consultation on the proposed inclusion of a ‘transparency in supply chains provision’ in the MSA, the UK Government framed the objectives of the provisions within the context of the UNGP, referring to its ‘essential elements’ of due diligence and reporting.<sup>78</sup> Moreover, section 54(5) of the MSA reflects key features of the UNGP that represent operationalisation of the corporate responsibility to respect human rights, namely, a policy commitment embedded within internal processes (including through the training of staff) and due diligence (including the mapping of supply chains and risk assessment). The Guidance also expressly refers to the UNGP as a tool to assist organisations to implement meaningful steps that can be reported under the MSA.<sup>79</sup> The Guidance specifically refers to due diligence processes and reporting as essential management tools that improve risk identification and long-term social, environmental as well as financial performance.<sup>80</sup> Further, the UK’s revised National Action Plan on Business and Human Rights released in May 2016 confirms that the UK Government is ‘addressing’ commitments to combat slavery and increase transparency and accountability in supply chains ‘through [its] work to implement the UNGPs and through the Modern Slavery Act and Modern Slavery Strategy’ and refers to the Reporting Framework as comprehensive guidance for companies to report on how they meet the responsibility to respect.<sup>81</sup>

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77 Public records indicate that the UNGP were referred to in submissions made by civil society in September 2014 as part of the consultation process undertaken by Members of Parliament appointed to examine the Bill: see Public Bill Committee, ‘Modern Slavery Bill: Written Evidence’ (House of Commons, 2014) [www.publications.parliament.uk/pa/cm201415/cmpublic/modernslavery/memo/modernslavery.pdf](http://www.publications.parliament.uk/pa/cm201415/cmpublic/modernslavery/memo/modernslavery.pdf) accessed 20 October 2016, 25, 36–37, 77–78. However, the UNGP do not feature in the records of the parliamentary debates on the Bill.

78 Home Office, ‘Modern Slavery and Supply Chains Consultation’ (UK Government, 12 February 2015) [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/448201/2015-02-12\\_TISC\\_Consultation\\_FINAL.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/448201/2015-02-12_TISC_Consultation_FINAL.pdf) accessed 20 October 2016, 10.

79 The Guidance, see n 6, Annex D.

80 The Guidance, see n 6, para 1.8.

81 Foreign & Commonwealth Office, ‘Good Business: Implementing the UN Guiding Principles on Business and Human Rights updated May 2016’ (UK Government, 12 May 2016) [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/522805/Good\\_Business\\_Implementing\\_the\\_UN\\_Guiding\\_Principles\\_on\\_Business\\_and\\_Human\\_Rights\\_updated\\_May\\_2016.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522805/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_updated_May_2016.pdf) accessed 20 October 2016, 3, 16.

The recitals of the EU NFRD expressly refer to the UNGP as guidance on which business can rely when reporting.<sup>82</sup> Similarly, the Burma reporting requirement expressly referred to the UNGP as a resource on human rights principles and practices in relation to the requirement to provide information on due diligence policies and processes on human rights impacts in Burma.<sup>83</sup> The FRC Guidance offers possible disclosures based on the UNGP to assist directors seeking to comply with the Companies Act's strategic reporting requirement and expressly refers to the UNGP as a source of guidance that companies can follow in whole or in part when comply with the reporting requirement.<sup>84</sup>

Although the CTSCA and FAR do not expressly refer to them, both the UNGP and Reporting Framework would serve as useful guidance for businesses seeking to implement measures to identify and address slavery and human trafficking risks, and then make the mandated disclosures.

## Conclusion

Reporting requirements can drive better strategic understanding of the risks and impacts of an organisation's core activities on human rights. The disclosure of the results of employing such management tools also enables investors to move capital towards more responsible businesses. Gauging the effectiveness of corporate reporting in promoting respect for human rights is complex, and there is a paucity of empirical data. The efficacy of transparency requirements in generating corporate behaviour with an enhanced respect for human rights, which in turn improves the protection of rights holders from corporate abuses will depend on numerous factors; these will include their ability to elicit meaningful information from businesses about their human rights policies, processes and performance that help level the playing field, contribute towards creating a race to the top and encourage effective public scrutiny of the human rights record of businesses.

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82 EU NFRD, see n 51, Recital (9): 'In providing this information, undertakings which are subject to this Directive may rely on national frameworks, Union-based frameworks such as the Eco-Management and Audit Scheme (EMAS), or international frameworks such as the UN Global Compact, the Guiding Principles on Business and Human Rights implementing the UN "Protect, Respect and Remedy" Framework, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the International Organisation for Standardisation's ISO 26000, the International Labour Organization's Tripartite Declaration of principles concerning multinational enterprises and social policy, the Global Reporting Initiative, or other recognised international frameworks.'

83 'Reporting Requirements' (Embassy of the US Rangoon Burma) <https://burma.usembassy.gov/reporting-requirements.html> accessed 20 October 2016.

84 FRC Guidance, see n 57, ss 7.29–7.37 and para 62.