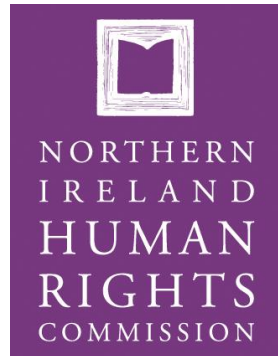


Modern Slavery (Transparency in Supply Chains) Bill [HL] 2016-17

Summary

The Northern Ireland Human Rights Commission:

- notes that The Modern Slavery (Transparency in Supply Chains) Bill extends only to England and Wales although the provision it seeks to amend in the Modern Slavery Act extends to Northern Ireland, and notes that 97 Northern Ireland authorities fall within the Bill's definition of a public body as 'central government authorities'; (para 12)
- recommends consideration is given to taking the necessary steps to ensure the application of The Modern Slavery (Transparency in Supply Chains) Bill to Northern Ireland; (para 13)
- notes that the definition of 'public bodies' within the Bill varies from the definition of 'public authorities' under the Human Rights Act; (para 15)
- recommends that consideration is given to whether those who fall within the definition of a public authority within the Human Rights Act should prepare a slavery and human trafficking statement for each financial year of the organisation. (para 16)
- welcomes the requirement for the Secretary of State to publish guidance for contracting authorities; (para 19)
- welcomes the provision to exclude economic operators who have not produced a slavery and human trafficking statement from participation in a procurement procedure; (para 22)
- notes the commitment within Northern Ireland Government Departments to embed human rights, and welcomes measures for public bodies to highlight this commitment through an annual slavery and human trafficking statement. (para 23)



Modern Slavery (Transparency in Supply Chains) Bill [HL] 2016-17

1. The Northern Ireland Human Rights Commission (NIHRC) pursuant to section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights. In accordance with this function the following statutory advice is submitted on the Modern Slavery (Transparency in Supply Chains) Bill [HL] 2016-17.

2. The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE), United Nations (UN), and European Union (EU) systems. The relevant international treaties in this context include:

- European Convention on Human Rights, 1950 (ECHR) [UK ratification 1951]
- European Social Charter, 1961 (ESC) [UK ratification 1962]
- International Convention on the Elimination of All Forms of Racial Discrimination, 1966 (CERD) [UK ratification 1969]
- International Covenant on Civil and Political Rights, 1966 (ICCPR) [UK ratification 1976]
- International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) [UK ratification 1976]
- United Nations Convention on the Rights of the Child, 1989 (CRC) [UK ratification 1991]
- The Charter of Fundamental Rights of the European Union,¹ 2000 (CFR) [UK ratification 2000]
- United Nations Convention on the Rights of Persons with Disabilities (CRPD), 2006 [UK ratification 2009]
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2002 [UK ratification 2009]
- The Treaty on the Functioning of the European Union, 2012²

¹ The Additional Protocol has been signed but not ratified [UK signature 2001]

² Official Journal C 326, 26/10/2012 P. 0001 – 0390

3. The Northern Ireland Executive (NI Executive) is subject to the obligations contained within these international treaties by virtue of the United Kingdom (UK) Government's ratification of them and the provisions of the Northern Ireland Act 1998.³

4. In addition to the treaties, there exists a body of 'soft law' developed by the human rights bodies of the CoE and UN. These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context include:

- ILO Tripartite Declaration on principles concerning multinational enterprises and social policy (2006)
- UN Human Rights Council, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Protect, Respect and Remedy: a Framework for Business and Human Rights, report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie (2008)
- UN Office on Drugs and Crime Model Law against Trafficking in Persons (UN Model Law), 2009
- ILO Declaration on Fundamental Principles and Rights at Work, (1998 (Annex revised 2010))
- EU Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011, on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA
- OECD Guidelines for Multinational Enterprises (2011)
- UN Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Business and human rights in conflict-affected regions: challenges and options towards State responses (2011)
- UN General Assembly, report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011)

³ In addition, Section 26 (1) of the Northern Ireland Act 1998 provides that 'if the Secretary of State considers that any action proposed to be taken by a Minister or Northern Ireland department would be incompatible with any international obligations...he may by order direct that the proposed action shall not be taken.' Section 24(1) states that 'a Minister or Northern Ireland department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act - (a) is incompatible with any of the Convention rights'.

- UN General Assembly, Resolution 17/4, Human rights and transnational corporations and other business enterprises (2011)
- UN General Assembly, Human rights and transnational corporations and other business enterprises (2011)
- UN, The Corporate Responsibility to Respect Human Rights: An Interpretive Guide (2012)
- UN General Assembly, Contribution of the United Nations system as a whole to the advancement of the business and human rights agenda and the dissemination of the Guiding Principles on Business and Human Rights (2012)
- UN Global Compact's Ten Principles (Update 2014)
- UN General Assembly, Human rights and transnational corporations and other business enterprises, UN Doc. A/HRC/RES/26/22 (2014)
- UN General Assembly, Human rights and transnational corporations and other business enterprises, Note by the Secretary-General (2014)
- UN General Assembly, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Note by the Secretary-General (2015)
- UN General Assembly, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (2015)
- UN General Assembly, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, note by the Secretariat (2016)

5. The Modern Slavery Act 2015, welcomed by the NIHRC, provides human rights protections in the field of business and human rights and modern slavery. The Modern Slavery Act created offences relating to slavery, servitude, forced or compulsory labour and human trafficking. It also established the Independent Anti-slavery Commissioner, provided enhanced protections for victims, and established provision to ensure transparency in supply chains.⁴ Specifically Part 6, Section 54(1), which requires that:

'A commercial organisation within subsection (2) must prepare a slavery and human trafficking statement for each financial year of the organisation.'

6. Section 2 of The Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015 states that '[t]he amount of total turnover prescribed for the purposes of section 54(2)(b) of the 2015 Act is £36 million'.

⁴ <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

7. Elements of the Modern Slavery Act were extended to NI through a legislative consent motion of the NI Assembly, including Part 6, Section 54, addressing transparency in supply chains:⁵

'David Ford (1:00 pm, 8th December 2014)

Question put and agreed to. Resolved:

*That this Assembly endorses the principle of the extension to Northern Ireland of the provisions of the Modern Slavery Bill, as brought from the Commons to the House of Lords on 5 November 2014, dealing with enforcement powers in relation to ships, as contained in clauses 37, 38 and 39 of Part 3 of the Bill and Part 3 of schedule 2 to the Bill; the Independent Anti-slavery Commissioner, in Part 4 of the Bill; and transparency in supply chains, in Part 6 of the Bill.*⁶

8. The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015 created offences of 'slavery, servitude and forced or compulsory labour' in Northern Ireland.⁷ It also contains provisions on 'assistance and support' for victims.⁸

9. The NIHRC notes the Private Members' Modern Slavery (Transparency in Supply Chains) Bill [HL] 2016-17 (the Bill). The Bill details an amendment to Part 6, Section 54, of the Modern Slavery Act. Part 6, Section 54, of the Modern Slavery Act was extended to Northern Ireland through the legislative consent motion highlighted above.⁹ However, Section 4(1) of the Bill states that it 'extends to England and Wales only'. This may create a lacuna where there are varying levels of protection under the Modern Slavery Act for England and Wales in contrast to Northern Ireland.¹⁰

10. The Bill contains proposals to extend the reporting requirements of the Modern Slavery Act to public bodies. Public bodies are defined in Section 1(3) of the Bill:

“(2A) A public body is within this subsection if it is a “body governed by public law”, a “contracting authority”, or a “central government authority” within the meaning of regulation 2 of the Public Contracts Regulations 2015.”

⁵ Other elements were extended to Northern Ireland through the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015

⁶ Northern Ireland Assembly, Official Report: Monday 08 December 2014
<http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2014/12/08&docID=216850>

⁷ Similarly to the Modern Slavery Act in England and Wales

⁸ Amongst other provisions, including creating offences for paying for sexual services and on forced marriages See <http://www.legislation.gov.uk/nia/2015/2/enacted>

⁹ The Modern Slavery Act highlights which Sections extend to which jurisdiction in Section 60

¹⁰ This may also be relevant in relation to Scotland

11. The Public Contracts Regulations 2015 includes 97 Northern Ireland authorities within its list of 'central government authorities' including the Equality Commission for Northern Ireland, the Northern Ireland Housing Executive, and the Northern Ireland Department of Justice, amongst others.¹¹

12. The NIHRC notes that the Bill extends only to England and Wales although the provision it seeks to amend in the Modern Slavery Act extends to Northern Ireland, and notes that 97 Northern Ireland authorities fall within the Bill's definition of a public body as 'central government authorities'.

13. The NIHRC recommends consideration is given to taking the necessary steps to ensure the application of the Bill to Northern Ireland.

14. The application of the Bill to 'public bodies' as defined in Section 1(3) of the Bill differs from the definition of 'public authority' in the Human Rights Act 1998 which provides a definition of a public authority as 'any person certain of whose functions are functions of a public nature'.¹² The use of 'public authorities' rather than 'public bodies' in the Bill could broaden the number of actors which would be encompassed therein. Some organisations covered may be commercial organisations who must already prepare a slavery and human trafficking statement for each financial year of the organisation under Section 54 of the Modern Slavery Act.

15. The NIHRC notes that the definition of 'public bodies' within the Bill varies from the definition of 'public authorities' under the Human Rights Act.

16. The NIHRC recommends that consideration is given to whether those who fall within the definition of a public authority within the Human Rights Act should prepare a slavery and human trafficking statement for each financial year of the organisation.

17. The Bill states:

'The Secretary of State shall publish guidance for contracting authorities on compliance with regulation 57(1A) of the Public Contracts Regulations 2015 and section 54 of the Modern Slavery Act 2015.'¹³

¹¹ Public Contracts Regulations 2015, SCHEDULE 1 Regulation 2(1) CENTRAL GOVERNMENT AUTHORITIES, p97-103

¹² Section 6(3)(b) and see *YL v Birmingham City Council & Others* [2007] UKHL 27

¹³ Section 3

18. The NI Department of Justice has produced a draft Human Trafficking and Modern Slavery Strategy 2016/17,¹⁴ which was published for consultation until 9th September 2016. The NIHRC responded to the draft Strategy, broadly welcoming the proposals.¹⁵ In particular, the provision of training to relevant officials coming into contact with victims of trafficking in human beings and the heightened degree of cooperation, especially cross-border, are necessary elements in the prevention of human trafficking.

19. The NIHRC welcomes the requirement for the Secretary of State to publish guidance for contracting authorities.

20. The Bill mandates for the exclusion of economic operators who have not produced a slavery and human trafficking statement in violation of the Modern Slavery Act (i.e. currently those with a turnover of more than £36m) from participation in public procurement procedures:

“(1A) Contracting authorities shall exclude an economic operator from participation in a procurement procedure where they have established, by verifying in accordance with regulations 59, 60 and 61, or are otherwise aware, that that economic operator has not produced a slavery and human trafficking statement under section 54 of the Modern Slavery Act 2015 (transparency in supply chains etc), where it is required under that Act to do so.”¹⁶

21. The NIHRC has an ongoing pilot project with the Northern Ireland Department of Finance to exclude economic operators who do not have a human rights policy agreed at board level from public procurement procedures.

22. The NIHRC welcomes the provision to exclude economic operators who have not produced a slavery and human trafficking statement from participation in a procurement procedure.

23. The NIHRC notes the commitment within Northern Ireland Government Departments to embed human rights, and welcomes measures for public bodies to highlight this commitment through an annual slavery and human trafficking statement.

¹⁴ Draft Human Trafficking and Modern Slavery Strategy 2016/17, see <https://www.justice-ni.gov.uk/consultations/draft-northern-ireland-human-trafficking-and-modern-slavery-strategy-2016-2017>

¹⁵ NIHRC Response to the Human Trafficking and Modern Slavery Strategy 2016/17, (2016), See <http://www.nihrc.org/publication/detail/nihrc-response-to-the-human-trafficking-and-modern-slavery-strategy-2016-17>

¹⁶ Section 2