
Independent Review of the Modern Slavery Act 2015
IEMA Written Submission - October 2018

Executive Summary

The Institute for Environmental Management and Assessment (IEMA) is the professional body for environment and sustainability practitioners. We have a membership of over 14,500 sustainability professionals who work at the interface between organisations, the environment and society to guide and lead the changes that will be required for a sustainable future. To help support the Independent Review of the Modern Slavery Act 2015, IEMA led a survey of its membership, which was also opened to the participants of the Modern Slavery and Ethical Labour in Construction Leadership Symposium 2018 and the 2018 Annual UK Top100 Corporate Modern Slavery Influencers' Index, as well as the members of the Higher Education Procurement Association.

A consensus emerges from these findings that those engaging with the legislation have reservations about its effectiveness at the UK and international level. As you will read in our findings, the limitations in scope of the legislation, along with a lack of enforcement provisions for noncompliance with section 54, and further concerns pertaining to the independence and effectiveness of the Commissioner (the Commissioner) are key aspects that influence this position. Using the results of this survey, which compiles the views of 285 professionals, and the insight from discussions with an IEMA expert panel on modern slavery, IEMA has put together a common set of recommendations to support the Independent Review of the Modern Slavery Act 2015.

We would welcome the opportunity to discuss these recommendations with the Modern Slavery Act Review Secretariat and others if that would be helpful.

The recommendations include:

- IEMA and 84% of its survey participants call for the publication of a list by the Home Secretary of all those businesses caught by the Modern Slavery Act 2015;
- The Global Slavery Index estimates that there are between 12,000 and 17,000 Modern Slavery Statements (Statements) due to be produced under s54 of the Modern Slavery Act. IEMA and 69% of survey participants believe that a central repository for organisations to upload their Statements should be created;
- IEMA and 26% of respondents concur that, barring the set up of an independent institution, the most time and resource efficient option would be for this repository to be administered by Companies House, allowing for Statements to be filed at the same time as company accounts;
- IEMA calls on the government to support its call for the creation of a standalone standard on modern slavery. The development of such a standard by the UK could be used as the model for engagement on this topic by organisations other countries;
- British nationals made up the highest number of cases for the first time in 2017 with 5,145 potential victims of trafficking and slavery. IEMA recommends that financial sanctions should be issued to penalise companies for non-compliance with section 54 based on turnover and help to radically reduce such numbers;
- The current Modern Slavery Act framework can result in complex Statements, that do not link into the company's long-term strategy for sustainability. IEMA recommends that companies should be required to show how their Modern Slavery Statement has been integrated within the overall business strategy and at all levels of the business;
- Current guidance within the Modern Slavery Act is general in scope. IEMA and 66% of its survey respondents call on government to issue tailor made guidance for high risk sectors, such as construction, agriculture and manufacturing, along with mandated reporting requirements;
- The extent of engagement around modern slavery within the public sector is limited to an amendment to the Public Contracts Regulations 2015. IEMA and

90% of its survey participants recommend that section 54 of the Modern Slavery Act should be extended to the public sector, to give all government bodies, local authorities and other public sector stakeholders an obligation to look at their supply chain;

- **IEMA, aligning itself with the advice of its expert panel, believes that the independence of the Commissioner can only be maintained if it is ring-fenced and set by parliament, thereby providing the Commissioner with the ability to plan for engagement with stakeholders over a longer period;**
- **IEMA recommends that the Commissioner should provide more focus around tracking and reporting to ensure that the legislation has teeth and can enable prosecution of non-compliant organisations;**
- **IEMA recommends tracking the impact on compliance rates by Canadian companies of the additional advisory powers of the Canadian Ombudsperson for Responsible Enterprise. This will assist the Office of the Commissioner in assessing whether such further powers could benefit the Commissioner in accomplishing its duties.**

Introduction

The Institute of Environmental Management and Assessment (IEMA) is the professional body for environment and sustainability practitioners. We have a membership of over 14,500 sustainability professionals who work at the interface between organisations, the environment and society to guide and lead the changes that will be required for a sustainable future. IEMA members provide assurance and confidence that environmental and social risks are being effectively managed, that public health and the environment are being protected, and that opportunities for innovation and improvement are realised. Our members are drawn from all types and size of organisation across the public and private sector, Non-Government Organisations and academia.

With 10 of its members listed on the 2018 Annual UK Top100 Corporate Modern Slavery Influencers' Index and having recently launched a Sustainability in Practice guide on Managing Compliance with Environmental & Human Rights Law in Organisations¹ at the Modern Slavery and Ethical Labour in Construction Leadership Symposium 2018², IEMA has developed a significant body of expertise on the topic of modern slavery across its membership base. To support the independent review of the Modern Slavery Act 2015 led by Frank Field, Maria Miller and Baroness Butler-Sloss, IEMA has carried out a survey for its members with practical experience engaging with the legislation.

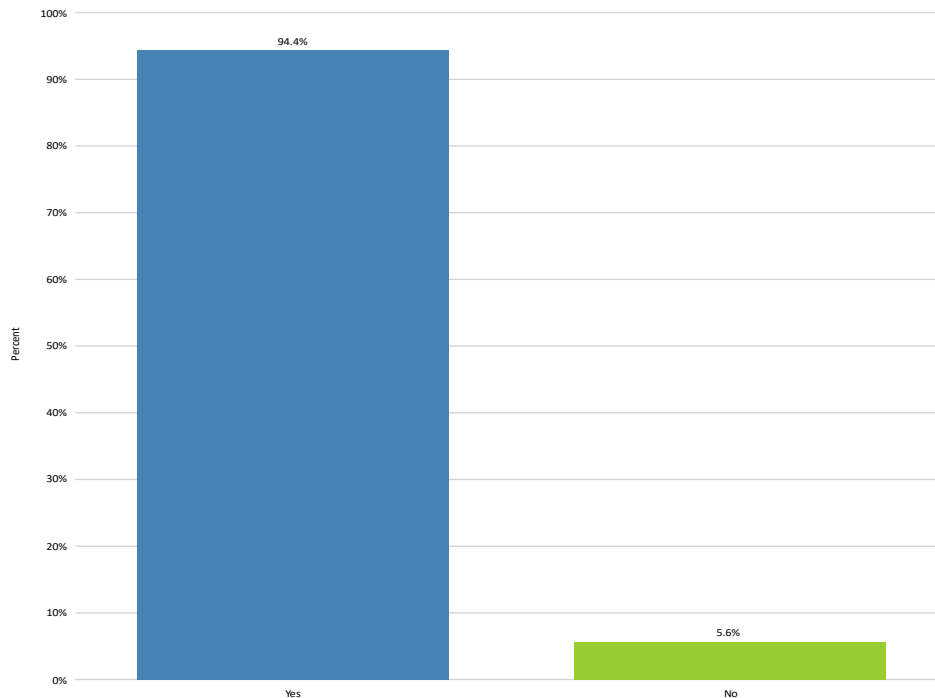
To further maximise the input of stakeholders with considerable insight on this topic, IEMA has opened the survey to the participants of the Modern Slavery and Ethical Labour in Construction Leadership Symposium 2018 and the 2018 Annual UK Top100 Corporate Modern Slavery Influencers' Index, as well as the members of the Higher Education Procurement Association³. By sharing the survey with the participants and members of these initiatives, IEMA was able to provide further in-depth perspectives on the lines of inquiry set out by the Modern Slavery Act Review Secretariat.

¹ <https://www.iema.net/sustainability-in-practice-managing-compliance/>

² <http://www.msa4construction.com/>

³ <https://www.hepa.ac.uk/>

Are you an IEMA member?



The survey, which closed on Friday 19th October, collates the views of a group of 285 sustainability professionals with significant experience engaging on this topic of which 94% were IEMA members. These findings, together with additional contributions from some of IEMA’s members with expertise on social sustainability matters, have helped to inform the IEMA response to this Independent Review of the Modern Slavery Act 2015.

Analysing the findings of the IEMA survey, the highest proportion of respondents 45% deem that the UK Modern Slavery Act is an effective piece of legislation to combat modern slavery in the UK. An additional 14% of respondents find that it is effective both globally and in the UK. 24% of respondents opted that it is not effective while 17% did not take a position on the matter.

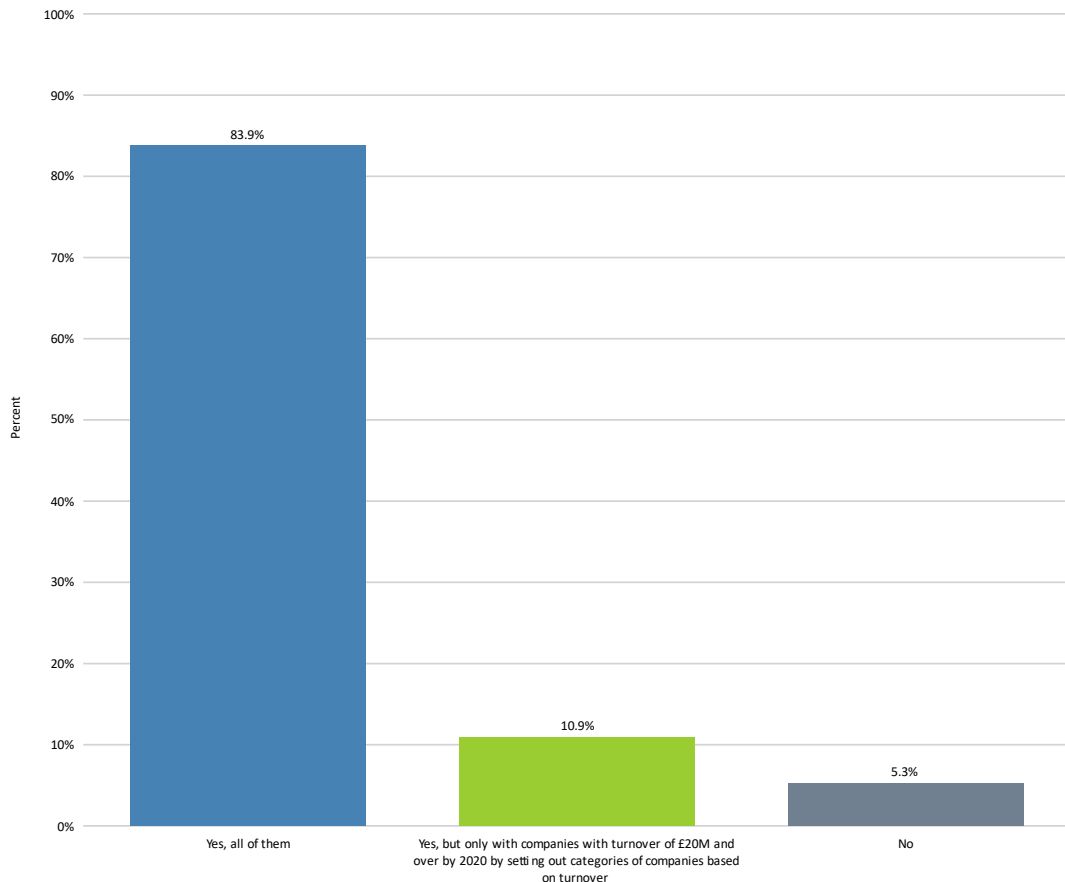
Given that, pursuant to section 54 of the Act, organisations need “to ensure that slavery and human trafficking is not taking place in any of its supply chains, and in any part of its own business”⁴ IEMA would hope to see more than 14% of respondents find the legislation effective at the international level. As we will explore below in our consultation response, the limitations in scope of the legislation, along with a lack of enforcement provisions for failing to disclose a Statement on the activities that they have carried out to combat modern slavery internally and in their supply chains, combined with concerns pertaining to the independence and effective of the Commissioner may have had some bearing on this position.

⁴ <http://www.legislation.gov.uk/ukpga/2015/30/section/54>

On transparency in supply chains

How to drive compliance

Should the Home Secretary be required to publish a list of businesses currently acting outside the scope of the Act?



IEMA asked respondents if the Home Secretary should be required to publish a list of businesses currently acting outside the scope of the Act. Most survey participants (84%) stated that the Home Secretary should do so and should include all businesses. 11% responded that the Home Secretary should do so but only with companies with a turnover with turnover of £20M and over by 2020, and by setting out categories of companies based on turnover. Only 5% of survey participants felt that the Home Secretary should not be required to publish a list at all.

At the start of 2017, small businesses accounted for 99.3% of all private sector businesses and 99.9% were considered either small or medium-sized (SMEs)⁵. In its most recent report the Chartered Institute of Buildings (CIOB) noted that there is growing evidence of rogue operators entering the formal economy around tiers four

⁵ <https://www.fsb.org.uk/media-centre/small-business-statistics>

and five of industry supply chains⁶. For this reason, SMEs stand to play a big role in the fight against modern slavery. This is particularly so as large organisations are unwilling to do business with SMEs that have opaque supply chains. Indeed, to overcome this the CIOB notes that since the introduction of the MSA some SMEs below the £36 million threshold, are now even voluntarily producing Statements⁷.

This explains why a large proportion of survey participants believe that the act should be extended beyond businesses supplying goods or services in the UK with a turnover of £36m or more (the current threshold) to include all businesses and along with this should come the requirement of producing a Statement.

Despite the arguments in favour of expanding the list of organisations that should produce Statements, IEMA considers that a staged approach should be taken. As a first step, the Home Secretary should begin by producing a list of organisations currently caught by the Act (with a turnover of £36M or more). This is particularly important in the face of reports by the CIOB that within the construction sector alone, less than a third of the industry has produced a Statement and many companies are either publishing Statements late, or not at all. Listing all those organisations would therefore be a valid first step to shining a light on the issue of non-compliance. As a second step, the Home Secretary could then announce an objective to reduce the threshold to organisations with a turnover of £20M or more by 2020 and potentially a third step whereby it would be lowered further by 2030. This staged approach would provide evidence of the UK's long term commitment to eradicating slavery from supply chain and incentivise organisations not presently caught by the act to support these efforts.

As the next step to supporting compliance with the Act, IEMA inquired from survey participants whether the government should create a central repository for organisations to upload their Statements on. Once again, most respondents (69%) felt that it should, while 18% felt that it should not, and 13% stated that they did not know.

This majority opinion, which is held by other leading organisations including the Global Slavery Index⁸, reinforces the fact that the absence of both a list and a repository means the Home Office is currently unable to effectively monitor compliance⁹. For this reason, IEMA supports the creation of both a list and a repository.

⁶ <https://www.ciob.org/campaigns/tackling-modern-slavery-construction>

⁷ <https://www.ciob.org/campaigns/tackling-modern-slavery-construction>

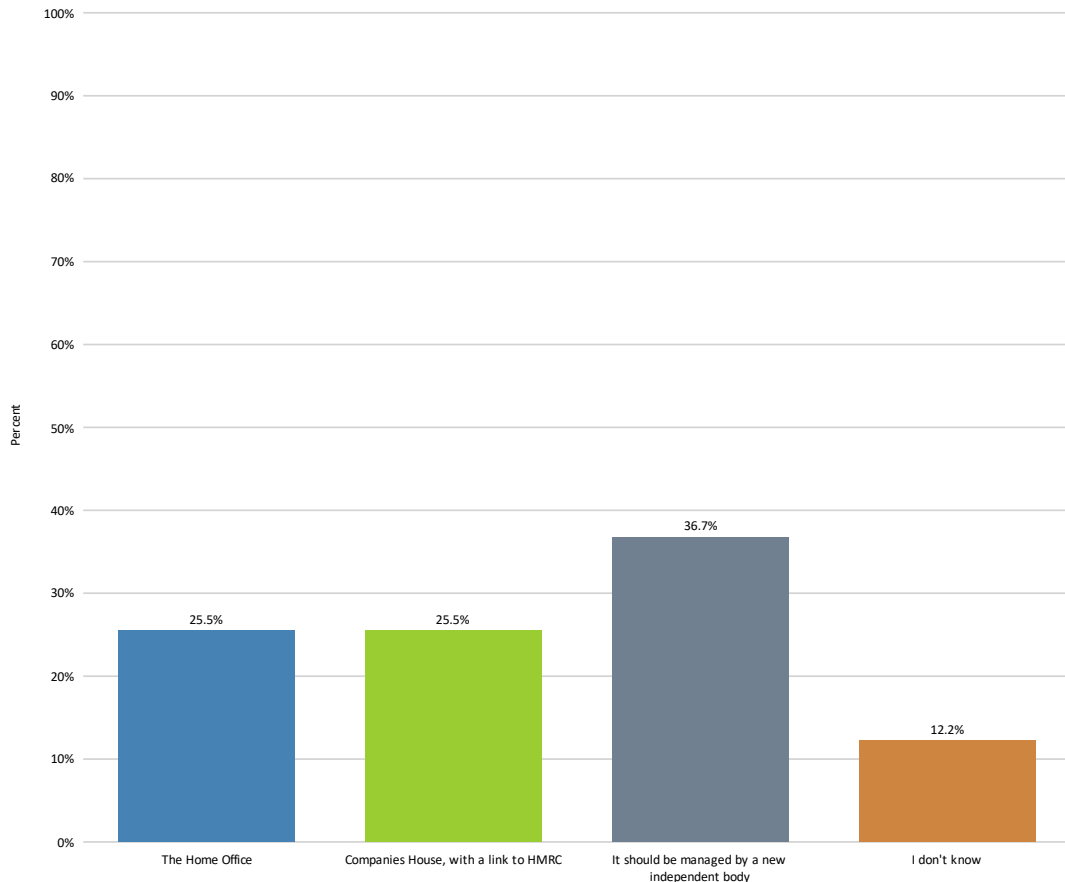
⁸ <https://www.globalslaveryindex.org/2018/findings/country-studies/united-kingdom/>

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Joint Committee on Human Rights 2017, Human Rights and Business 2017: promoting responsibility and ensuring accountability - Sixth Report of Session 2016-17, House of Lords and House of Commons. Available from: <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/443.pdf>. [8 November 2017].

Central repository

Who do you believe should manage/administrate a central repository for organisations to upload their Modern Slavery Statements?



The issue of management of this repository was the next question set to survey participants. The highest proportion of respondents (38%) felt that it should be overseen by a new independent body, whereas 26% believed that Companies House, with a link to HMRC¹⁰, should be the best institution to handle this responsibility.

Several key stakeholders that were influential in securing the inclusion of the section 54 clause that requires submission of a Statement, including the Business & Human Rights Resource Centre (BHRRRC), have also advocated for the Government to create a central registry that would host such Statements. In the absence of such a repository, the BHRRRC along with several partners have created the Modern Slavery Registry¹¹.

¹⁰ Given the fact that company directors have a duty to inform Companies House and HMRC of any changes to the company, many obligations under the Companies Act 2006 simply require the Registrar of Companies to be notified of changes, following which it will automatically inform HMRC accordingly. A similar process could therefore be provided for under the Modern Slavery Act.

¹¹ <https://www.modernslaveryregistry.org/pages/about-us>

The Global Slavery Index estimates that there are between 12,000 and 17,000 Statements due to be produced under s54, many of which are housed on the Modern Slavery Registry. BHRRC, as well as its partners and core supporters (that include the Law Society) agree that a central registry should be established supported by government which meets a core set of criteria and be “independent, accountable to the public interest, robust, credible, free, open, accessible and sustainable in the long term”¹².

Centralisation of this repository would allow easy public scrutiny while highlighting the efforts of responsible companies to map their supply chains, examine corporate systems and structures and conduct due diligence. As petitioned for by several leading NGOs, including the Ethical Trading Initiative or the BHRRC on the design of an effective modern slavery act both in the UK and in Australia¹³, a central, government-funded, civil society-run repository of Statements would reinforce the ability to provide credible and robust information on organisations caught by the legislation, while at the same time showcasing non-compliant organisations and thereby facilitating their prosecution and further helping to eradicate the problem of modern slavery.

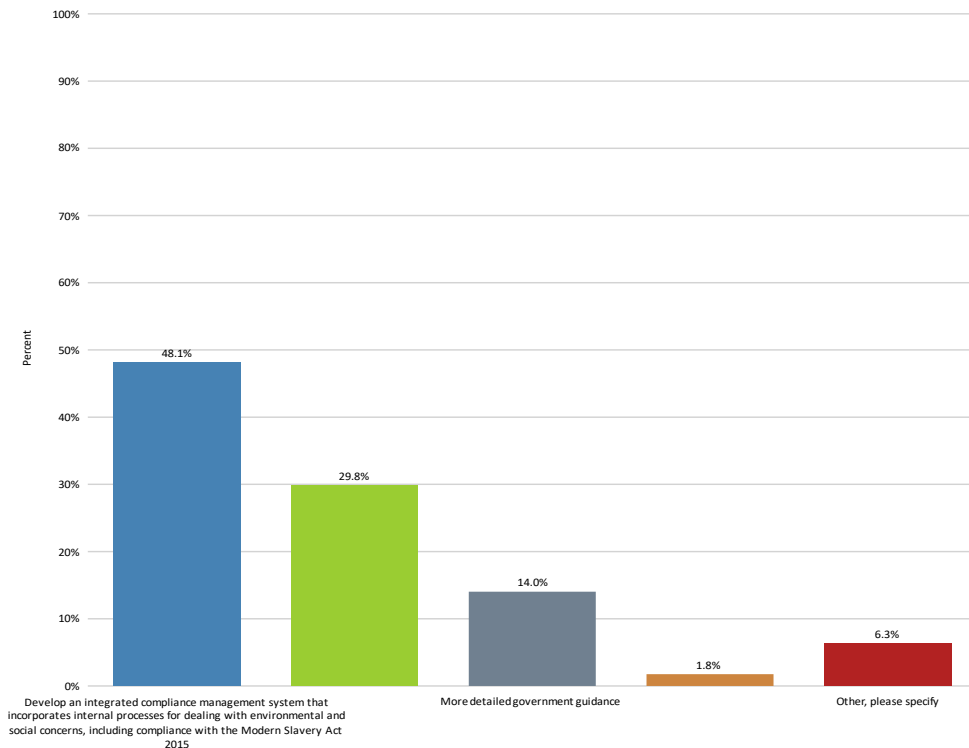
Despite the benefits of creating an independent central repository, the current drawbacks are the significant resources this would require. Following consultation with IEMA’s expert panel, IEMA recommends that a more effective interim solution would be to provide amendments to the legislation to allow the Statement to be lodged with Companies House. This would be a resource and time efficient solution given the ongoing obligation for companies to file company accounts with Companies House under the Companies Act 2006. This would mean that the Statement could be filed with the accounts at the same time.

¹² https://www.modernslaveryregistry.org/pages/about_us

¹³ <https://www.business-humanrights.org/en/inquiry-into-establishment-of-a-modern-slavery-act-in-australia>

The role of standards

Which of the following do you think could better support internal compliance by organisations with the requirements of the Act?



Survey respondents provided their opinion on how they could better support internal compliance by organisations within the requirements of the Act. 48% of professionals felt that the development of an integrated compliance management system that incorporates internal processes for dealing with environmental and social concerns, including compliance with the Modern Slavery Act 2015, would be beneficial. 30% of participants felt that a standalone standard (e.g. BSI or ISO standard) that could guide organisations on how to combat modern slavery would help organisations. 14% found that more detailed government guidance would be beneficial while 2% stated they did not know. Finally, 5% of survey participants offered different perspectives on this question including a mix of all the above approach as well as penalties for non-compliance which we will discuss next.

ISO 14001:2015 is an international standard which specifies the requirements for an environmental management system that an organisation can use to enhance its environmental performance. Within the EU alone there are over 80,000 businesses

with registered environmental management systems according to ISO 14001¹⁴. Standards therefore represent a considerable opportunity for manage legal compliance.

Earlier this year, during the development of its latest Sustainability in Practice Guide on Managing Compliance with Environmental and Human Rights Law in Organisations¹⁵, IEMA surveyed nearly 650 of its members on the topic of integrated compliance. During that survey, 54% of members, which include environmental management and compliance professionals, confirmed that they are increasingly being asked to undertake audits of lifecycle and the supply chain, including issues such as conflict minerals, anti-bribery legislation and modern slavery. The survey, which was conducted in parallel to 4 workshops across the country, also confirmed that nearly two thirds of the survey participants worked for organisations that did not have integrated compliance management systems in place to manage environmental and human rights compliance. Furthermore, 67% of participants confirmed that they had a management system in place which was ISO 14001 accredited. This underscored the urgent need for a practitioner's guide on the topic of integrated compliance management, by offering them clarity and practical advice through context setting, checklists, step-by-step charts and case studies.

The guidance made the point that although there is no agreed international standard for managing human rights impacts, there is recognition that there are clear links that can be made with Management System Standards, whether you use ISO 14001, ISO 9001 or ISO 45001. The document provides some guidance on how to make these links in the absence of an international standard that provides guidance on this issue. Given how popular standards are with organisations and the degree of investment that spent on training by management to ensure their implementation, standards clearly represent a considerable opportunity for better securing compliance of businesses with human rights legislation such as the Modern Slavery Act 2015.

Currently, the UK is a leading nation in the international standards system¹⁶. The aim of this system is to develop one standard on any given aspect of a product or service, to be adopted in countries worldwide: a single national standard model. Within the UK, on the topic of modern slavery and in its capacity as the UK National Standards Body, BSI has already led the development of the BSI Trafficking and Supply Chain Slavery Patterns Index. The Index enables its clients to understand the intersection and relationship between sources of displaced people, and the likelihood of being exploited upon arrival in destination countries, as it estimates the risk associated with the movement and exploitation of people between 191 source countries and 193 destination countries, with each combination ranked from low to severe based on the

¹⁴ <https://www.eea.europa.eu/data-and-maps/indicators/number-of-organisations-with-registered/assessment>

¹⁵ <https://www.iema.net/sustainability-in-practice-managing-compliance/>

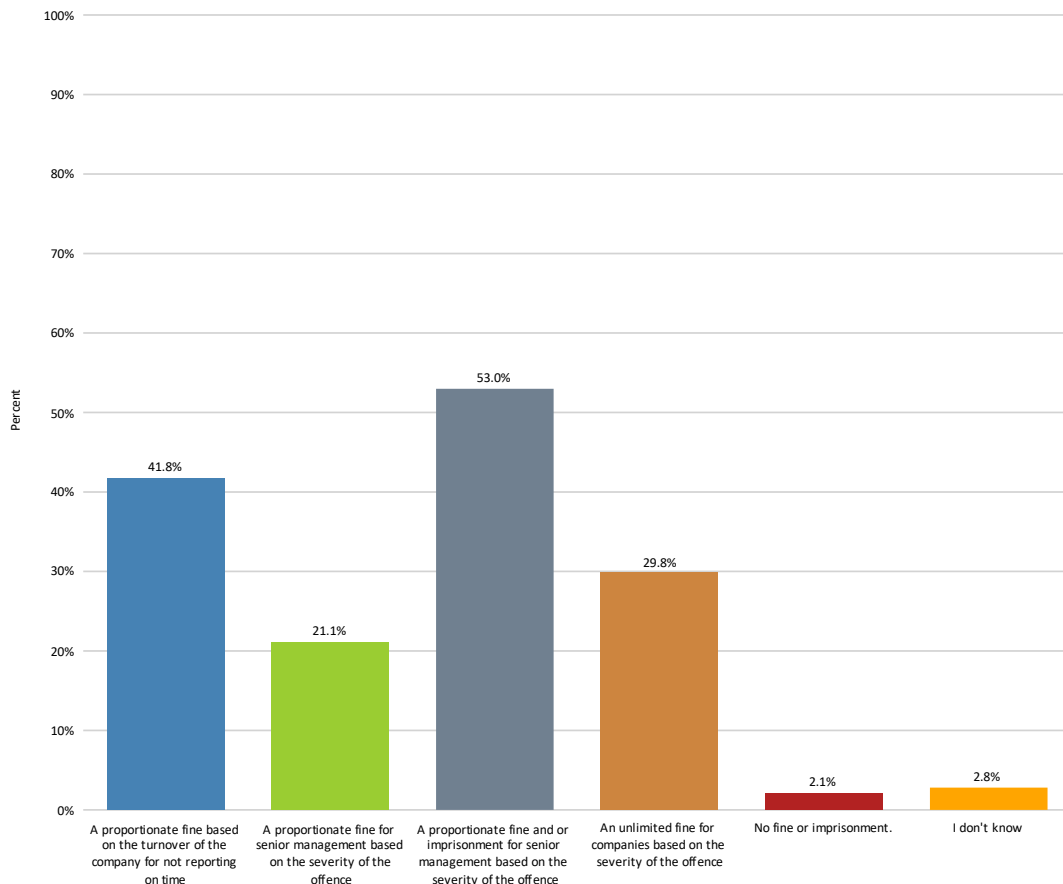
¹⁶ <https://www.bsigroup.com/en-GB/about-bsi/uk-national-standards-body/standards-policy-on-the-uk-leaving-the-eu/>

risk score. Building on this engagement, coupled with the support of Government, BSI could develop a management system standard that would provide step by step guidance for member organisations on compliance with the Modern Slavery Act 2015. The development of such a standard by the UK could be used as the model for engagement by other countries on this topic. In addition to tackling the 136,000 people living in modern slavery in the United Kingdom¹⁷, replicating such a standard at the global level could provide practical guidance for organisations registered in other jurisdictions and make an impact to reduce the 40.3 million men, women, and children who are victims of modern slavery¹⁸.

In the absence of an international standard to support organisations in managing human rights impacts, and given the urgency of the problem, IEMA supports the creation of a UK standalone standard on modern slavery to guide organisations in combatting the issue.

Penalties

What level of punitive measures do you think the Modern Slavery Act should provide for failure to comply with Section 54 of the legislation (please select all that apply)



¹⁷ <https://www.globallslaveryindex.org/2018/findings/country-studies/united-kingdom/>

¹⁸ <https://www.globallslaveryindex.org/2018/findings/global-findings/>

The Modern Slavery Act currently contains no mechanism around enforcement. It is worth noting that other legislation like the UK Bribery Act 2010 introduces a strict liability offence for companies and partnerships for failing to prevent bribery. The introduction of this new corporate criminal offence places a burden of proof on companies to show they have adequate procedures in place to prevent bribery. The act also provides for strict penalties for active and passive bribery by individuals as well as companies.

IEMA therefore inquired from survey participants as to their position on the potential need for punitive measures in cases of non-compliance under the Modern Slavery Act.

A mix of findings which overwhelmingly point towards a need for sanctions was received. 53% of options picked by participants (participants were given the opportunity for this question to opt for more than one answer) leaned towards a proportionate fine and/or imprisonment for senior management based on the severity of the offence being introduced within the legislation. The second most popular response (with 42% of options picked) was that the government should issue a proportionate fine based on the turnover of the company for not reporting on time. The third highest response (32.3%) suggested that an unlimited fine should be issued to companies based on the severity of the offence. 21.5% of options picked found that a proportionate fine should be issued to senior management based on the severity of the offence. Only 2.7% felt that there should be no fine or imprisonment, leaving 3.2% that did not have a position on the issue.

Currently the only available option to government is the ability to bring proceedings in the High Court for an injunction requiring an organisation to comply with section 54 of the Modern Slavery Act 1954. The likelihood of an injunction being brought forward, remain slim. The most likely implications for businesses that do not set out the steps they have taken to eliminate slavery and human trafficking from their supply chains and their own business is the risk of negative publicity, the threat to brand value, company reputation and investor relations. Although there is a welcome cluster of leading companies taking robust action, such as Marks & Spencer, Sainsbury and Unilever, this risk does not appear to have incentivised most organisations in high risk sectors to comply with section 54.

Agriculture, for example, is a high-risk sector for potential modern slavery and human trafficking. In a report issued by the Office of the Commissioner and the University of Nottingham's Rights Lab back in August assessing agricultural companies' compliance with the Modern Slavery Act (a high-risk sector for potential modern slavery and human trafficking) found that only 50% of agricultural companies which should be reporting under the Act had done so one year after the requirements came into force. Furthermore, only 38% of these Statements were compliant with the requirements of the law, meaning overall only 19% of the agricultural sector is abiding by the terms of

the Modern Slavery Act 2015¹⁹. Added to recent reports by the National Crime Agency that British nationals made up the highest number of cases for the first time in 2017 (5,145 potential victims of trafficking and slavery were flagged up to the National Referral Mechanism, which identifies and supports victims – the highest number recorded by the UK authorities since the figures were first compiled in 2009 - and a 35% rise from 2016²⁰), it is becoming apparent that a more effective sanctions should be integrated into the legislation.

A recent report by the Business & Human Rights Resource Centre, analysing the first year of FTSE 100 Reports under the Modern Slavery Act, confirms that 42 of the UK's largest companies are failing to meet all three of the minimum requirements for the legislation: with company Statements not approved by the board, nor signed by a director or even failing to contain a link to the Statement on the homepage of the company website²¹. As part of its recommendations, the Business & Human Rights Resource Centre has called on the government to improve enforcement mechanisms to ensure companies are pressured to comply and are penalised for failing to do so.

Given the requirement for senior management to sign off modern slavery Statements, it would seem reasonable to tie in the sanctions to the fiduciary duties of senior level management. As will be revisited in the section on the Role of the Independent Commissioner, under Driving Best Practice, a system of enforcement against individuals applying the similar principles to those of applied in the Health and Safety at Work Act 1974.

Turning to the responsibility of companies, IEMA would recommend financial sanctions that penalise companies for non-compliance with section 54 based on turnover as the scale of the fine should incentivise the board to invest more time in complying with the legislation.

Wider regulatory environment

IEMA conducted further discussions with its panel of experts on the place of the Modern Slavery Act within the wider government regulatory environment on corporate compliance. A clear position emerged that the legislation should form part of the UK Government's policy of encouraging disclosure of information by companies into the public domain to enable customers and investors to make more informed decisions as to whether they wish to do business with the company.

¹⁹ <http://www.antislaverycommissioner.co.uk/media/1220/modern-slavery-act-and-agriculture-poor-performance-briefing.pdf>

²⁰ <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/2017-nrm-statistics/884-nrm-annual-report-2017/file>

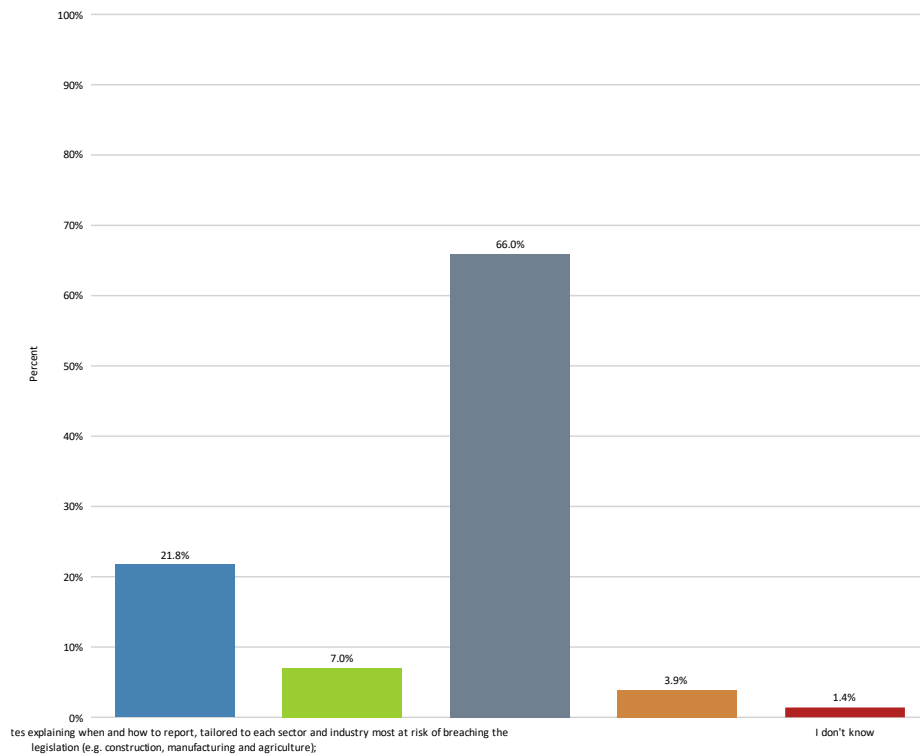
²¹ <https://www.business-humanrights.org/sites/default/files/FTSE%20100%20Report%20FINAL%20%28002%291Dec2017.pdf>

IEMA members called for the need for a reporting framework which enables better informed customers and investors, while rendering companies accountable in the same way as they might be under Companies Act 2006 or even the Criminal Finances Act 2017. They found that the current Modern Slavery Act framework can result in complex Statements, that do not link into the company’s long-term strategy for sustainability. They are often seen as stand-alone compliance statements, that largely reflects the key clauses as set out by the primary legislation (e.g. this includes but is not limited to the company policy, supply chain engagement, risks, staff training).

Companies should therefore be required to show how the Statement is integrated within the overall business strategy and at all levels of the business. An option for doing so would be integrating the Statement within the organisation’s official sustainability strategy.

How to improve quality

How can we improve the quality of Modern Slavery Statements?



IEMA asked survey participants how companies could be encouraged to improve the quality of Statements. 22% recommended the publication of official government guidance notes explaining when and how to report, tailored to each sector and industry most at risk of breaching the legislation (e.g. construction, manufacturing and agriculture). 7% of respondents recommended that reporting be mandated for key

sectors including construction, manufacturing and agriculture, extractives and tourism.

The strongest consensus recorded at 66% found that both of the above options (guidance notes and mandated reporting) should be pursued, while only 4% of respondents did not support any of these options, leaving 1% without a position on the issue.

Current official guidance on the Modern Slavery Act²² is general in scope, including information as to who is required to publish a Statement, how to write a slavery and human trafficking Statement and how to approve and publish the Statement. However, the guidance is not tailored to each sector nor does it provide support to organisations as to what procedures it can set out to help tackle and/or identify modern slavery across all levels of the business.

Apart from links supplied to additional guidance offered by NGOs such as the Walk Free Foundation, Core Coalition or the Ethical Trading Initiative²³, there is a need to include for government guidance and templates for staff training and induction that will help identify potential breaches early on. IEMA calls on government to issue tailor made guidance for high risk sectors, such as construction, agriculture and manufacturing, along with mandated reporting requirements, which stand to make a considerable impact on modern slavery figures if implemented correctly.

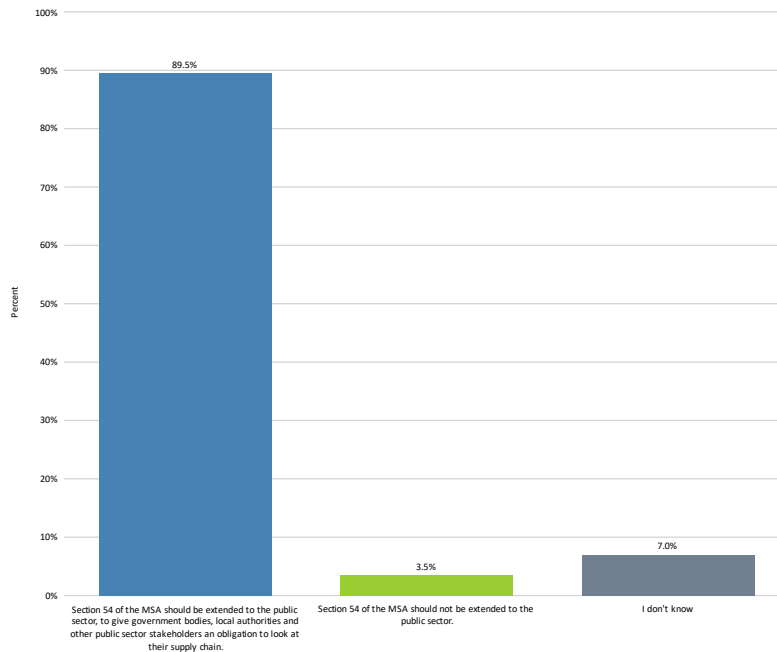
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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/649906/Transparency_in_Supply_Chains_A_Practical_Guide_2017.pdf

²³ <https://www.walkfreefoundation.org/news/resource/tackling-modern-slavery-in-supply-chains-a-guide-1-0/>

Public procurement

Should section 54 be extended to the public sector?



An overwhelming majority of the IEMA survey participants (90%) felt that section 54 of the Modern Slavery Act should be extended to the public sector, to give government bodies, local authorities and other public sector stakeholders an obligation to look at their supply chain. Only 3% felt that it should not be extended to the public sector and 7% did not take a position on the issue.

As noted by the Global Slavery Index²⁴, the extent of engagement around modern slavery within the public sector is limited to an amendment to the Public Contracts Regulations 2015. This provides that when bidding for public sector contracts, businesses must declare that they are compliant with requirements of section 54 of the Modern Slavery Act and have published a Statement. If businesses are in scope of this requirement but have not published a Statement this is grounds for exclusion them from bidding.

In 2016, Baroness Young of Hornsey introduced a private member’s bill attempting to extend the reporting requirement in section 54 of the 2015 MSA to include all public authorities, among other amendments. The bill was not successful and was replaced by a similar, second private member’s bill, introduced by Baroness Young in mid-2017. However, it has not yet progressed to a second reading²⁵. While these amendments

²⁴ <https://www.globalslaveryindex.org/2018/findings/country-studies/united-kingdom/>

²⁵ Joint Committee on Human Rights 2017, Human Rights and Business 2017: promoting responsibility and ensuring accountability - Sixth Report of Session 2016-17, House of Lords and

to legislation have not yet passed it clearly shows there is interest in holding government bodies to the same reporting requirements as business.

IEMA believes that all public bodies should address supply chain transparency in the same way as the private sector, applying the same principles as those used under the Modern Slavery Act 2015.

To support this transition to encompass public sector organisations under the Modern Slavery Act, government would need to ensure that these organisations are complying with the legislation. This could be an opportunity for government to give public sector bodies more direction by adding in an additional section to the guidance document on complying with the Modern Slavery Act. Subject to available resources, this addendum could provide a requirement for maturity pathways. In its first year, the pathway would outline two or three key headline sections under which public sector organisations would carry out due diligence with the support of government. This would be followed by wider compliance goals under years 3, 4 and 5, stretching across key industries.

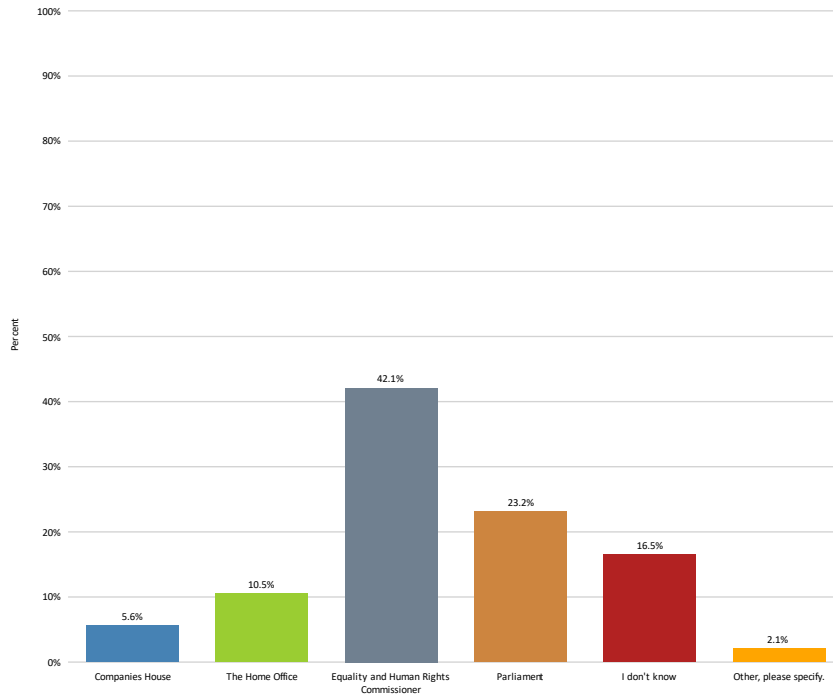
An alternative solution also envisaged by our panel of expert included the creation of a code of practice akin to that of the Welsh Government Code of Practice on Ethical Employment in Supply Chains, extended the requirements of the Public Contracts Regulations 2015 to require all companies that public sector organisations procure from to have abided by this compulsory code of practice.

House of Commons. Available from:
<https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/443.pdf>. [8 November 2017]

On the role of the Independent Commissioner

Accountability/independence

To help strengthen the independence of the Commissioner, who do you think the Commissioner should report to?



When asked in what ways could the Commissioner’s independence be strengthened to ensure that the office of the Commissioner can fulfil its role effectively, the strongest survey response (42% of respondents) found that the Commissioner should report to the Equality and Human Rights Commissioner instead of the Home Office. The second highest response (23%) found that he should report directly to parliament. Both answers support a requirement for enhanced independence of the Commissioner.

Discussing the issue further with IEMA’s expert panel, a consensus was reached that the Commissioner’s budget should in fact be ring-fenced and set by parliament, to provide the Commissioner with the ability to plan for engagement with stakeholders over a longer period (e.g. 10 years).

IEMA believes that the Commissioner’s staff should reflect a diversity of civil servants, that meet a set criterion of expertise on this topic. Its members argue that, given the importance of the issue and in the interests of the country, a political structure should be retained whereby a parliamentary appointed 'super-complainant'/watchdog organisation should provide clarity on what the key activities of the Commissioner should be.

Coordination

Following consultation with its panel of experts, IEMA believes that the Commissioner should adopt a three-layered approach (strategy, intelligence/outreach, data) when seeking to work with key interlocutors in the modern slavery space.

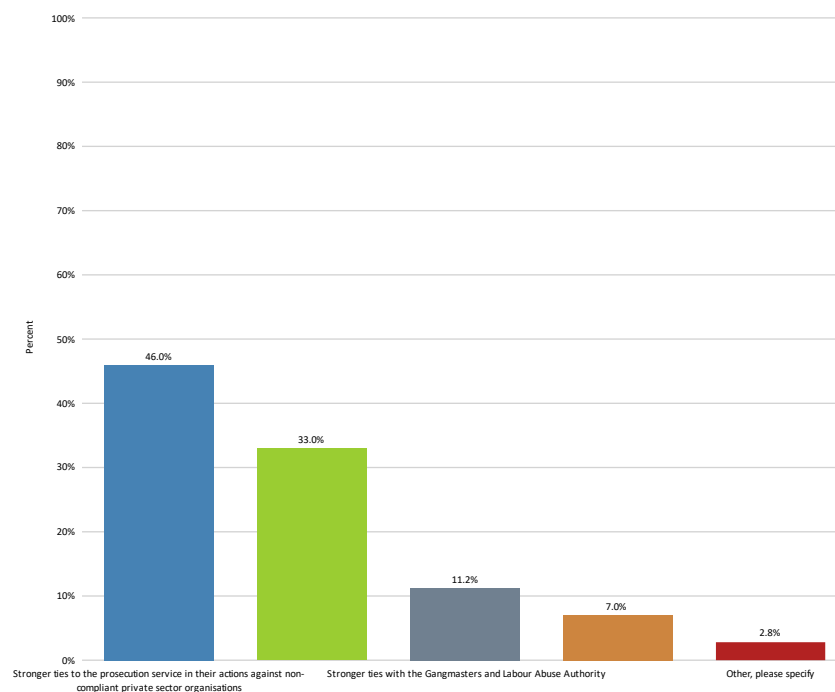
This should include a strategy that informs how the Commissioner will coordinate his/her engagement with other stakeholders, research and understanding as to who the stakeholders are.

In addition to the main enforcement bodies such as GLAA and the police or the Devolved Administrations, the Commissioner should potentially conduct outreach to additional institutions, such as social services, HM Prison Service and the NHS that work with victims of modern slavery or the criminals who perpetrate these crimes and therefore play a role to play in the fight to combat modern slavery.

Thirdly, a data collection exercise should help to demonstrate what the impact of this engagement has been and thereby better inform how funds should be allocated to the office of the Independent Commissioner going forward.

Driving best practice

Which powers do you think would assist the Commissioner in supporting best practice and performance in the UK response to tackling modern slavery?



46% of participants in the IEMA survey (either within the IEMA membership or through the membership of the participating external organisations/initiatives) believe that stronger ties to the prosecution service in their actions against non-compliant private sector organisations would assist the Commissioner in supporting best practice and performance in the UK response to tackling modern slavery. The second highest response (33%) found that survey participants felt the Commissioner should have an enhanced educational role on modern slavery, independently of law enforcement and government agencies responsible for investigation and enforcement.

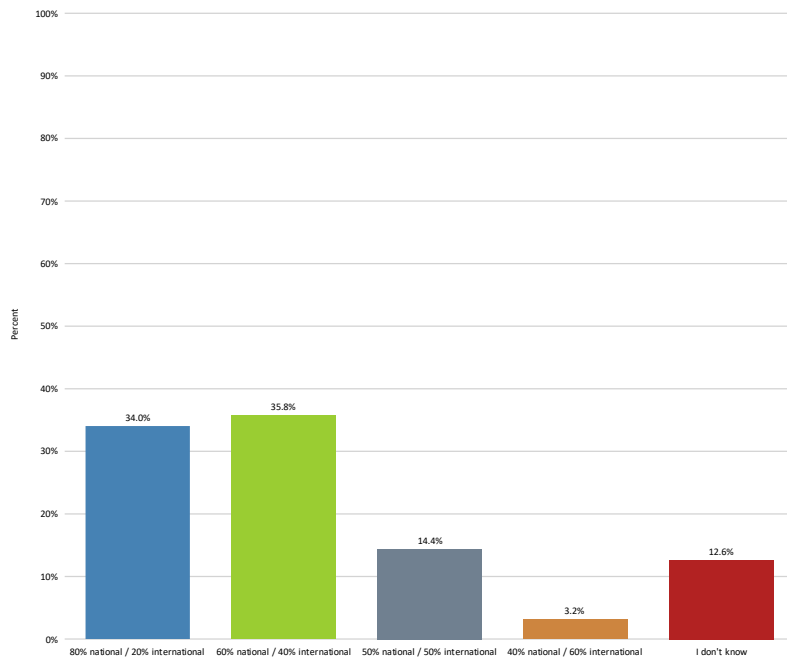
In discussion with IEMA members, several contrasted the Modern Slavery Act with the French duty of vigilance law for businesses²⁶, which requires business to monitor their company and supply chains for human rights and environmental protection violations and puts non-compliant organisations at risk of facing possible financial penalties totalling as much as 10 million euros. Furthermore, the French legislation also establishes a common set of standards and requiring a vigilance report, that goes further than the UK Statement. A consensus has therefore emerged that the UK model for combatting modern slavery could benefit from the Commissioner providing more focus around tracking and reporting to ensure that the legislation has teeth and can enable prosecution of non-compliant organisations.

IEMA and its members therefore call for legislation that carries significant penalties for organisations and individuals who are complicit or actively supporting all forms of modern slavery. A potential model this could be based on is the Health and Safety at Work Act 1974²⁷, and could provide that individuals are guilty of an offence until such times as they can demonstrate that they have taken all reasonable steps to prevent acts of modern slavery within the organisation.

²⁶ S. Brabant, France Corporate Duty of Vigilance Law - A Closer Look at the Penalties Faced by Companies, Business and Human Rights Resource Centre (2017) – Available here <https://www.business-humanrights.org/sites/default/files/documents/French%20Corporate%20Duty%20of%20Vigilance%20Law%20-%20Penalties%20-%20Int%25271%20Rev.Compl.%20%26%20Bus.%20Ethics.pdf>

²⁷ <http://www.hse.gov.uk/legislation/hswa.htm>

International



36% of respondents to this survey believe that the balance of work of the Commissioner should be split between domestic and international matters, with a 60% national - 40% international divide. The second highest response rate coming in at 34% found the respondents calling for the Commissioner to spend 80% of its time on national matters and 20% of its time on international matters.

In the current geo-political context participants believe that the Commissioner should focus more time on national than international engagement. As members have stated in their responses, desire to engage with the Commissioner at the international level will be reliant on the priorities of each Nation State, which in some case may turn a blind eye to the issue of modern slavery or human rights abuses generally. The role and status of the Commissioner would therefore be limited to working with interested governments and NGO international interlocutors to develop international action to counter people smuggling and the causes of modern slavery.

A decision to perform a global review of the maturity of understanding and engagement against modern slavery, overlaid by political sensitivities, could help to inform the focus of the Commissioner's interventions at the international level. To further help support the actions of the Commissioner abroad, the UK's National Action Plan on Business and Human Rights²⁸ could be reviewed to assess whether the provision on modern slavery are fit for purpose and are being properly embedded in countries where the UK has foreign offices.

²⁸ <https://www.ohchr.org/en/issues/business/pages/nationalactionplans.aspx>

Finally, turning to other international models, the higher investigative powers of the recently announced Canadian Ombudsperson for Responsible Enterprise (CORE²⁹), that will focus on the mining, oil, and gas, and garment sectors, are worthy of consideration by the Commissioner. In its capacity as a Corporate Responsibility watchdog, the Ombudsperson will seek to address alleged human rights abuses arising from a Canadian company's operations abroad. The Ombudsperson will have a wide mandate, with the ability to recommend the withdrawal of certain Government services, such as trade advocacy for companies found to be involved in wrongdoing. It would be worth tracking how these additional powers impact the rate of compliance with human rights legislation by Canadian companies and seeing whether such further enforcement powers could benefit the Office of the Commissioner in accomplishing its duties.

²⁹ <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/faq.aspx?lang=eng>