

Inclusion of Scottish public bodies in Transparency in Supply Chains (TISC) - Consultation Analysis

Consultation Report

December 2022

1. Inclusion of Scottish public bodies in Transparency in Supply Chains (TISC) - Consultation Analysis

This report provides an analysis of responses to our consultation on the proposals to extend reporting requirements to include Scottish public bodies for the publication of modern slavery statements as part of work to improve Transparency in Supply Chains.

A compressed 8 week consultation period was held to allow responses to be received, analysed and provided to the Home Office ahead of the proposed publication of the UK Modern Slavery Bill in October 2022.

The consultation paper can be accessed here: [Inclusion of Scottish public bodies in Transparency in Supply Chains \(TISC\) reporting - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

The Scottish Government would like to thank all those who responded.

2. Background

The consultation sought views on proposals to extend the reporting requirements to Scottish public bodies for the publication of modern slavery statements as part of work to improve Transparency in Supply Chains. It also sought views on the mechanisms for this reporting and associated enforcement regimes.

Alongside commercial organisations, the public sector has a crucial role to play in addressing the risks of modern slavery in its supply chains, with [£13.3bn of procurement spend annually across the Scottish public sector alone](#). Many public sector organisations have already started to identify and address modern slavery risks within their supply chains and beyond, and the UK Government propose that UK public sector bodies be included in the formal requirement to publish a modern slavery statement. As per the requirements for commercial organisations, this would extend to public sector organisations with an annual budget – as opposed to turnover – of £36 million or more, unless they are already captured by the existing legislation.

The UK Government has a number of proposals upon which the consultation sought views, many of which will form part of the proposed UK Modern Slavery Bill announced on 10 May 2022 and stem from the 2018 [Independent Review of the Modern Slavery Act](#). The [UK previously consulted on these proposals in July-September 2019](#) and this consultation allowed the Scottish Government to provide targeted questions to public sector bodies ahead of further policy development.

Proposals include:

- Inclusion of public bodies in the reporting requirement for a modern slavery statement.
- The introduction of a single reporting deadline on which all organisations must publish their statement each year. This will improve the ease in which action

across organisations can be compared, assisting in the monitoring of compliance and the provision of support to organisations.

- Mandating that the reporting of specific topics within the statement be compulsory to facilitate transparency.

3. **Current practice**

Section 54 of the Modern Slavery Act 2015 (Transparency in Supply Chains) stipulates that certain commercial and private sector organisations must publish an annual modern slavery statement. This must be approved by the Board of Directors or equivalent, setting out the steps being taken to prevent modern slavery in their operations and supply chains.

Section 54 applies in Scotland and takes the form of a written statement which is published on the organisation's website or via the provision of written copies to anyone who lodges a request for access to the statement.

The criteria for this requirement include the business being UK-based and having an annual turnover of £36 million or more. Guidance for businesses in Scotland, regarding the risks of trafficking and exploitation in supply chains, was [issued by the Scottish Government in 2018](#).

4. **Previous UK Consultations**

The [UK Government previously consulted on Transparency in Supply Chains \(July-September 2019\)](#) – this consultation included questions regarding the inclusion of public bodies. The [response to this consultation](#) was published in September 2020.

5. **Consultation timelines**

The consultation ran for a compressed 8 week period, from 27 June 2022 to 22 August 2022, to allow responses to be received, analysed and provided to the UK Government to inform the Bill drafting process. Respondents were able to respond using the consultation hub online, via email directly to the Scottish Government's Human Trafficking Team or in writing using the Respondent Information Form.

6. **Overview of Responses**

The following questions were designed to collect stakeholders views on Transparency in Supply Chains and associated reporting requirements for Scottish public bodies and to offer the opportunity to comment on the UK-wide proposals. These questions focused principally on the inclusion of Scottish public bodies in the requirement to provide a modern slavery statement and the associated reporting requirements and enforcement regimes.

In total, 23 responses were received to the consultation, including 20 from organisations and 3 individual responses. In accordance with the respondent's requests, four were not cleared for publication but were included in the analysis below. Some respondents answered a selection of questions as opposed to

responding to the full consultation. All percentages are rounded to the nearest whole number and as a result, percentages may not always round to 100%.

This report presents a question-by-question analysis. A summary table is presented for each of the closed questions. In most cases the analysis of comments is structured according to arguments made in support of or opposition to a proposal, rather than how a respondent answered a preceding closed question. Where the term respondents is used, this refers to both individual respondents and those responding on behalf of an organisation.

7. Consultation Questions and Responses

Question 1:

Are you an organisation which currently voluntarily publishes a modern slavery statement?

Answer	Responses	Percentage
Yes	6	29%
No	15	71%
Don't know	0	0%
Total	21	100%
No answer	2	

The majority of respondents (71%) do not currently publish a modern slavery statement voluntarily. Three respondents were participating in an individual capacity.

Question 2a:

Do you support the proposal for public bodies in Scotland with a budget of £36m or more to be included in the statutory reporting requirement for a modern slavery statement?

Answer	Responses	Percentage
Yes	18	86%
No	3	14%
Total	21	100%
No answer	2	

A majority (86%) supported the requirement for public bodies with a budget of £36m or more to be included in the statutory reporting requirement with regards to the production and publication of a modern slavery statement.

Question 2b:

If you have answered no to 2a, please provide further information.

Multiple respondents responded to question 2b, including those who had answered yes to question 2a.

Two organisations noted that they felt the requirement for a Modern Slavery Statement should extend to all public bodies in Scotland regardless of budget. Others felt that the £36m was a crude figure that should be broken down in some way, for example specifying if this should include budget spent on wages or simply that spent on goods and services or third party spend as opposed to spend on pay. Other responses stated that staff numbers could be used as opposed to budget as the qualifying criteria and requested that further consultation would be welcomed on the criteria used to select public bodies obligated to produce a statement.

For those that answered no, some commentary was received from public sector organisations and those involved in public sector procurement on the likely resource demands this would bring and that guidance should be provided so bodies are aware of their obligations under the legislation once the metric for defining which bodies were within scope of the statutory reporting requirement.

Question 3a:

There is a proposal to introduce a single reporting deadline. Do you think this would be beneficial or detrimental?

Answer	Responses	Percentage
Beneficial	16	76%
Detrimental	5	24%
Total	21	100%
No answer	2	

A majority of those who responded (76%) stated that a single reporting deadline would be beneficial.

Question 3b:

Please provide further information regarding your answer at 3a.

A number of responses noted that a single reporting deadline ensured consistency across all sectors and could prompt organisations to undertake any necessary action required to meet identified measures or targets and would raise the profile of the transparency agenda, as has been seen with the Gender Pay Gap single reporting deadline. One body stated that a unified deadline would also ease the process of comparing and scrutinising organisations and identifying when public bodies have not met their obligation. Some commented that a deadline which falls at the end of the financial year would be optimal to allow this to be conducted alongside other reporting requirements which involve supply chain assessment.

However, multiple consultees in the public sector who are already producing statutory reports noted that a set deadline could create pressure on organisations who already have a number of reporting requirements – some allied to the financial year and others aligned to the Annual Procurement Report (APR) deadline– and that a separate deadline was unhelpful for their resource management, with the caveat that any requirement within legislation should be proportionate.

Question 4:

Please tell us what challenges you feel public sector organisations could face in producing a modern slavery statement?

Some responses centered on the extra burden the requirement would place on public sector bodies, commenting on the additional administration and costs, noting the requirement to collect data to satisfy the statement and that some public sector

organisations have limited awareness or expertise in conducting the required due diligence.

Multiple respondents, including several public sector bodies, also noted that the largest challenge is not the production of the statement, but the management, monitoring and evaluation of the supply chain and any associated risk assessments and auditing that would be required, with many public sector organisations noted to have a lack of visibility below the second tier of suppliers. Audit Scotland remarked that guidance to clarify expectations would be welcomed. It is this follow up activity that multiple respondents flagged as time and resource consuming, though they supported the principle of the reporting requirement.

SCTS noted that as many public sector bodies have suppliers in common, there is a challenge to the public sector in co-ordinating its activity so as not to overburden suppliers with duplicate requests and inquiries.

Question 5a:

Current guidance suggests that statements cover the following 6 areas. Which of these do you think should become mandatory?

1. The organisation’s structure, its business and its supply chains.
2. Its policies in relation to slavery and human trafficking.
3. Its due diligence processes in relation to slavery and human trafficking in its business and supply chains.
4. The parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk.
5. Its 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.
6. The training and capacity building about slavery and human trafficking available to its staff.

Answer	Yes	No	Total
Option 1	18 86%	3 14%	21 100%
Option 2	20 95%	1 5%	21 100%
Option 3	17 81%	4 19%	21 100%
Option 4	19 90%	2 10%	21 100%
Option 5	16 76%	5 24%	21 100%
Option 6	19 90%	2 10%	21 100%
No answer	Two respondents did not provide an answer on any option		

Strong support was seen for all six options proposed, with a majority of respondents supporting the requirement for all six to become mandatory requirements. Option two – the publication of policies relating to slavery and human trafficking – received the most support. Of the options offered, option 5 (the effectiveness of an organisation 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) received the lowest support as a mandatory requirement, although this was still supported by over two thirds of respondents.

Question 5b:

Please provide further information regarding your answers at 5a.

The majority felt that all proposed areas were worthwhile for inclusion, with comments including the belief that they were ‘important’, ‘proportionate’ and ‘relevant’ in the production of an informative modern slavery statement, with public sector bodies including higher education representatives and Audit Scotland supporting their inclusion. Some bodies elected not to include option 5 due to the burden they felt it would yield with regards to the requirement to undertake a detailed supply chain review.

As with other questions, comments were received from public bodies regarding the resource this would require in addition to pre-existing administrative requirements including climate, sustainability and fair work reporting. Therefore, while some respondents acknowledged the value of the measures, they cautioned that the ‘potential additional and financial resource costs’ of continual monitoring and compliance should not be underestimated. Some respondents also reiterated the need for clear guidance to ensure consistency in the quality of reporting, with one stating that guidance should seek to ensure public bodies ‘report on progress in combatting modern slavery against the steps and commitments outlined in previous reporting year statements.’

Question 6a:

Do you think public sector organisations should be able to publish a group statement and respond collectively?

Answer	Responses	Percentage
Yes	15	75%
No	5	25%
Total	20	100%
No answer	3	

Three-quarters of respondents (75%) supported the proposal for public sector organisations to be able to publish a group statement and to respond as a collective in some circumstances.

Question 6b:

**Who do you think would be responsible for signing off a group statement?
Please explain your answer.**

If you are a public sector organisation please include any relevant examples of the group structure under which you might report and any information on who would be permitted to sign off such a statement.

Respondents provided a range of views, covering their answers to both 6a and 6b.

On the question of group statements, some respondents stated the option to do this was one which would be efficient for some areas of the public sector, though some public sector respondents noted that this may raise complexities where reporting requires commentary on internal business operations. Others stated that any public sector organisation that comprises a separate legal entity should be required to publish its own statement as each is responsible for its own procurement and has its own complex business practices.

Regarding who was responsible for sign off for a group statement, responses were varied. Some stated this would be the most senior responsible person within that group – namely the appropriate Accountable Officer as with individual statements or jointly by all CEOs/Accountable Officers from the participating organisations. Another suggestion from multiple respondents was that central/Scottish Government should draft and sign off the statement on behalf of a group and then mandate that it was adhered to in order to ensure sectoral-level oversight and reduce the burden on agencies. One suggestion was that this would fall to procurement Officials within the government, with one procurement representative stating that, for some sectors, Procurement Centres of Expertise (CoE) could be utilised to report on behalf of groups. Other respondents noted that group statements can result in diminished visibility and impact and Audit Scotland flagged that consideration should be given as to how a group is defined.

Question 7:

Current guidance requires public sector modern slavery statements to be signed off by the accounting officer, chief executive or equivalent role, and approved by the senior management body.

What level of sign-off or clearance do you feel is appropriate for a modern slavery statement? Please explain your answer.

The majority of respondents stated that the CEO/Accountable Officer or most senior legally responsible person should sign off this statement with oversight from any board. This would ensure the organisation demonstrated commitment to the aims of the statement and highlight that assurance responsibility sits with them. No responses suggested this should be signed off at a level any more junior than board level, though Audit Scotland noted that some organisations may use a senior decision making body to clear statements.

Question 8a:

Do you think that Scottish public sector organisations would face any challenges when publishing their modern slavery statement on the UK Government registry?

Answer	Responses	Percentage
Yes	3	15%
No	17	85%
Total	20	100%
No answer	3	

The vast majority of respondents (85%) stated that they did not feel there would be any challenges with regards to the publication of a modern slavery statement on a centralised UK registry.

Question 8b:

If you have answered yes, please explain your answer.

No issues were identified in the answers with regards to the use of a central registry, with a Local Authority respondent noting that as public bodies are subject to Freedom of Information requests and that because this information would not be considered commercially sensitive, the information should be unproblematic to publish. Another respondent noted that the purpose of a statement is to improve an organisation's response to modern slavery risks, not to comply with a legal requirement. One respondent also suggested that, in order to strengthen this registry as the platform for publication, recommending that the registry be given a statutory basis within the Act alongside naming those organisations within scope of the obligations.

Question 9:

What assistance do you feel would be appropriate to support public sector organisations in fulfilling the requirements of the modern slavery statement?

Multiple respondees – including several public sector body respondents - highlighted the need for templates, training, the sharing of best practice, support and guidance to be provided to public bodies to assist them in producing their modern slavery statement. Several responses suggested this could comprise a centralised resource or service which was centrally managed and provided by government. Additional requests from some stakeholders included enhanced funding to counteract the resource requirement for this report and the ability for public sector organisations to access NGO audit programmes on supply chains. SCTS also highlighted that identification of the 'at risk' commodities and services would allow public bodies to focus their attention appropriately.

Assistance in monitoring the supply chain was also highlighted as a concern, for example a 'common monitoring system' was suggested or a centralised registry of suppliers as suggested by Scottish Canals.

Question 10a:

One specific recommendation from the review was that the UK Government should strengthen its approach to organisations failing to comply with section 54 of the Act. The UK Government has subsequently announced that while the Home Office will maintain and monitor the government-run registry of modern slavery statements and use this to identify organisations who have not met the reporting requirements, a new single enforcement body will have powers to impose financial penalties against non-compliant organisations. This would involve a gradual and incremental approach to sanctions, from initial warning letters through to civil penalties. Such enforcement measures would commence no sooner than one year after any changes to the reporting requirements.

Do you think the application of civil penalties are an effective tool to increase compliance with the requirement to publish a modern slavery statement?

Answer	Responses	Percentage
Yes	8	38%
No	6	29%
Unsure	7	33%
Total	21	100%
No answer	2	

We received a mixed response to this question, with respondents divided across the three substantive answers. The commentary below highlights the variation in perspectives with regards to the efficacy of civil penalties.

Question 10b:

If you have answered no or unsure to 10a, what alternative mechanisms do you feel would be appropriate and effective?

Responses were received from some respondents who answers yes to 10a.

A number of respondents suggested that performance reporting to highlight any deviations from agreed standards, along with the publication of a register highlighting those that have not complied with the requirement to produce a modern slavery statement could replace the requirement for civil penalties. Others questioned the logic of the public sector fining other elements of the public sector for non-adherence and whether this would in practical terms be necessary given the staged warning process, with one questioning the merit of impacting already constrained budgets. It was noted that any fine on public bodies would have an adverse impact on their ability to carry out their aims and objectives which may lead to negative impacts on the tax payer. Others – including the Scottish Qualifications Authority – suggested support to address the underpinning issues behind non-compliance would be more effective than penalties. In addition, the provision of support and guidance could be utilised where organisations/groups have not complied as there could be a number of reasons behind the failure to adhere.

Others felt that 'civil penalties and a definite, hard' response date would encourage reporting, particularly if there is precedence for civil penalties aligned to other statutory requirements. This included some organisations likely to be bound by these penalties, with Scottish Enterprise acknowledging that enforcement will likely be gradual and incremental. Penalties could also be issued in conjunction with showcasing and celebrating good practice from the private sector. Suggestions also included linking the reporting requirement to that for gender pay gap reporting, with SCTS noting that non-adherence penalties could be combined with adverse publicity to further encourage compliance.

Question 11:

Do you have any other comments on the proposals regarding Transparency in Supply Chains?

Comments here included remarks on the requirement for 'open Government data... to be available for civil society to be able to help enforce efforts to end modern slavery in our supply chains. Open supplier data in particular is necessary.'

One response from a Local Authority also reiterated the concerns regarding human and IT resource pressures and that the focus would fall on 'retrospective reporting' as opposed to proactive vigilance and actions. This was echoed in another consultation response, where it was commented that 'reporting alone is not commensurate with a public sector authority taking effective steps to eliminate modern slavery in its operations and supply chains'.

One respondent also remarked that 'the Modern Slavery Bill is used as an opportunity to strengthen existing reporting requirements under TISC, while also, crucially, introducing a new legal framework for the imposition of import controls on goods produced or transported in-whole or in-part with forced labour. This would allow the targeting of specific companies and goods affected by forced labour, that will encourage the remediation of such practices as well as preventing the goods in question from entering the UK market.'

Many respondees, including Scottish Enterprise and Scottish Water, also reiterated that they would welcome further guidance and engagement on this requirement.



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