

RightsDD and Hogan Lovells Modern Slavery Series
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Human trafficking: what is it and what does it mean for business?

The Modern Slavery Act (“the MSA”) has raised awareness of slavery among businesses. Human trafficking is less well understood, despite it also being an offense under the MSA. The legal definition of human trafficking captures a wide variety of recruitment and employment malpractices: There is therefore a high risk of human trafficking in supply chains. This guide explains the offense by means of example and details corporate duties associated with its elimination.

Reporting requirements under the Modern Slavery Act.

The MSA requires certain businesses¹ to publish a statement on any steps which they have taken to ensure that slavery and human trafficking are not taking place in their supply chains or in any part of their business.²

How is human trafficking defined under the Modern Slavery Act?

Under the MSA³, an offence of human trafficking requires that a person:

- a. arranges or facilitates the travel of another person;
- b. with a view to that person being exploited.

“Travel” can be international or domestic. “Exploitation” relates to slavery, servitude, forced or compulsory labour, sexual exploitation, removal of organs and securing services by force, threat or deception. All of these terms are separately defined under the Act and additional protection is given to children and other vulnerable persons.⁴

The offence can be committed even where the victim consents to the travel. This reflects the fact that a victim may be deceived by the promise of a better life or job or may be a child who is influenced to travel by an adult.

In addition, the exploitation of the potential victim does not need to have taken place for the offence to be committed. This means that arranging or facilitating the movement of the individual with a view to exploiting them falls within the scope of human trafficking.



What does trafficking look like in practice?

Company A is a UK retailer which purchases seafood from Company B. Company B operates a fleet of fishing vessels in Country X and uses recruitment agents to source workers for the vessels from poor communities in Country X's interior. The agents promise prospective workers a good wage and good living conditions and arrange to transport them to the vessels. The reality is that the conditions on the vessels are poor and the workers often go unpaid and the agents knew this in advance. The vessels travel a great distance into open sea and the workers do not have a realistic opportunity to withdraw their labour.

This would meet the definition of trafficking under the MSA. There is travel (movement from the workers' villages to the vessels); and the agents of Company B have a view to exploit the workers (either because of deception as to wage and working conditions or because the conditions on board amount to slavery). It is irrelevant that the workers may initially have consented to travel. It would also meet the definition of trafficking under international law and Company A would be considered "linked" to the adverse human rights impact under the UN Guiding Principles, requiring that it use leverage over Company B and its agents to prevent and mitigate the impact.

How does compliance with the MSA relate to the responsibility to respect human rights relating to human trafficking under the UN Guiding Principles?

Only certain businesses are required to comply with the MSA. However, all businesses, irrespective of their size and where they operate, are expected to respect the full range of internationally recognised human rights, including those related to human trafficking⁵.

A business which fulfils this responsibility will have, amongst other things, a human rights policy and due diligence process to identify, prevent, mitigate and account for how it addresses human rights impacts, including in relation to human trafficking. As the definition of human trafficking under international law⁶ is broadly consistent with the definition under the MSA, the business would be able to produce an MSA statement detailing these processes without having to implement any new processes specific to the MSA. It would also be in a position to comply with any warranties in contracts with counter-parties requiring procedures to respect human rights in general and trafficking in particular and would future proof itself against the development of further legislation relating to the responsibility to respect human rights.



Appendix – the legal definition

Arts 1, 2 and 3 of The Modern Slavery Act define trafficking in the following terms:

“2 Human trafficking

(1) A person commits an offence if the person arranges or facilitates the travel of another person (“V”) with a view to V being exploited.

(2) It is irrelevant whether V consents to the travel (whether V is an adult or a child).

(3) A person may in particular arrange or facilitate V’s travel by recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V.

(4) A person arranges or facilitates V’s travel with a view to V being exploited only if—

(a) the person intends to exploit V (in any part of the world) during or after the travel, or

(b) the person knows or ought to know that another person is likely to exploit V (in any part of the world) during or after the travel.

(5) “Travel” means—

(a) arriving in, or entering, any country,

(b) departing from any country,

(c) travelling within any country.

3 Meaning of exploitation

(1) For the purposes of section 2 a person is exploited only if one or more of the following subsections apply in relation to the person.

Slavery, servitude and forced or compulsory labour

(2) The person is the victim of behaviour—

(a) which involves the commission of an offence under section 1, or

(b) which would involve the commission of an offence under that section if it took place in England and Wales.



Sexual exploitation

- (3) *Something is done to or in respect of the person—*
- (a) *which involves the commission of an offence under—*
 - (i) *section 1(1)(a) of the Protection of Children Act 1978 (indecent photographs of children), or*
 - (ii) *Part 1 of the Sexual Offences Act 2003 (sexual offences), as it has effect in England and Wales, or*
 - (b) *which would involve the commission of such an offence if it were done in England and Wales.*

Removal of organs etc

- (4) *The person is encouraged, required or expected to do anything—*
- (a) *which involves the commission, by him or her or another person, of an offence under section 32 or 33 of the Human Tissue Act 2004 (prohibition of commercial dealings in organs and restrictions on use of live donors) as it has effect in England and Wales, or*
 - (b) *which would involve the commission of such an offence, by him or her or another person, if it were done in England and Wales.*

Securing services etc by force, threats or deception

- (5) *The person is subjected to force, threats or deception designed to induce him or her—*
- (a) *to provide services of any kind,*
 - (b) *to provide another person with benefits of any kind, or*
 - (c) *to enable another person to acquire benefits of any kind.*

Securing services etc from children and vulnerable persons

- (6) *Another person uses or attempts to use the person for a purpose within paragraph (a), (b) or (c) of subsection (5), having chosen him or her for that purpose on the grounds that—*
- (a) *he or she is a child, is mentally or physically ill or disabled, or has a family relationship with a particular person, and*
 - (b) *an adult, or a person without the illness, disability, or family relationship, would be likely to refuse to be used for that purpose.*

[...]



1 Slavery, servitude and forced or compulsory labour

(1) A person commits an offence if—

(a) the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is held in slavery or servitude

or

(b) the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour.

(2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention.⁷

(3) In determining whether a person is being held in slavery or servitude or required to perform forced or compulsory labour, regard may be had to all the circumstances.

(4) For example, regard may be had—

(a) to any of the person's personal circumstances (such as the person being a child, the person's family relationships, and any mental or physical illness) which may make the person more vulnerable than other persons;

(b) to any work or services provided by the person, including work or services provided in circumstances which constitute exploitation within section 3(3) to (6).

(5) The consent of a person (whether an adult or a child) to any of the acts alleged to constitute holding the person in slavery or servitude, or requiring the person to perform forced or compulsory labour, does not preclude a determination that the person is being held in slavery or servitude, or required to perform forced or compulsory labour



Art 3 of the Palermo Protocol defines trafficking in the following terms:

“(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age”



1 A qualifying commercial organisation is a body corporate or partnership (wherever incorporated or formed) which carries on business or part of a in the UK; supplies goods or services; and has a total turnover of £36 million or more

2 Section 54 MSA

3 Section 2 MSA

4 Section 3 MSA, see Appendix

5 See Principle 12 of the UN Guiding Principles

6 Article 3 of the Palermo Protocol (see Appendix) The definition of trafficking contained in that instrument was adopted in the Council of Europe Convention on Action against Trafficking in Human Beings (and Directive 2011/36/EU on preventing and combating trafficking". If anything, the definition under international law is slightly broader than the definition under the MSA. Unlike the MSA, it does not require "travel"; rather it applies to "recruitment, transportation, transfer, harbouring or receipt of persons"; and the list of practices constituting "exploitation" is open, meaning that it could be defined so as to encompass forms of exploitation not expressly stated in the MSA.

7 ECHR.

