

UK GOVERNMENT PUSHED TO IMPOSE A CORPORATE DUTY TO PREVENT HUMAN RIGHTS ABUSE

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Legal Briefings

The UK Parliament's Joint Committee on Human Rights latest [report](#) on Human Rights and Business has urged the Government to introduce new legislation and to take stronger enforcement action to prevent business-related human rights abuses.

If the Committee's recommendations were adopted in full, business enterprises could be liable to prosecution for failing to prevent human rights abuses, in a similar manner to the operation of the Bribery Act 2010, which imposes criminal sanctions for companies who fail to prevent bribery unless they can show that they had in place "adequate procedures" designed to prevent persons associated with them from committing bribery.

New legislation of this nature would be complex and, potentially, controversial. In view of Brexit, it is unlikely that it will be a priority for the Government. Nevertheless, the Committee report demonstrates that there continues to be real pressure for stronger regulation in the area of business and human rights.

In 2013, the UK Government was the first to adopt a National Action Plan on Business and Human Rights and which sought to implement the recommendations contained in the United Nations Guiding Principles on Business and Human Rights. The UK Government has also shown leadership in relation to modern slavery, introducing the [Modern Slavery Act](#) (MSA) in 2015. This followed amendments to the Companies Act which came into force in 2013 requiring UK registered companies to disclose the steps they have taken to manage human rights risks in their operations.

The measures taken in the UK have sought to encourage companies to integrate human rights considerations into their risk management, governance and compliance processes but they have been criticised as being too soft. The Committee report calls for much tougher regulation including:

- amendments to the Modern Slavery Act to impose stricter requirements on supply chain transparency;
- increased powers and resources of the agencies responsible for enforcement of the MSA and related legislation;
- new legislation imposing a duty on all companies to prevent human rights abuses and creating a new criminal offence of failure to prevent human rights abuses.

The report recommends that new business and human rights legislation require all companies to implement effective human rights due diligence processes throughout their supply chain and that new offences modelled on the Bribery Act 2010 should be adopted. In relation to the proposed criminal offence of failing to prevent human rights abuses, the report suggests it would be a defence for a company to demonstrate that it had conducted effective human rights due diligence. The Committee emphasised that these new obligations should apply to parent companies in a manner such that civil and criminal remedies would be available where human rights abuses occurred due to actions of subsidiaries, or in their supply chains.

The Committee found that there were significant obstacles preventing victims of business-related human rights abuse from accessing effective remedies in the UK, including legislative changes that had reduced access to legal aid, limits on the recovery of legal costs, increases in court and tribunal fees and the high costs of civil litigation. As well as new civil and criminal remedies, the report also calls for reform of the UK National Contact Point, which is responsible for resolving complaints about the conduct of UK enterprises in relation to human rights, environment, labour and other matters (based on the OECD Guidelines for Multinational Enterprises).

The Committee acknowledged concerns related to protection of human rights in the UK post-Brexit and specifically recommend that EU laws on human rights reporting requirements and public procurement rules relating to human rights should be transposed into UK law by means of the Great Repeal Bill and that “in the longer term, UK laws on reporting and procurement in relation to human rights should continue to set standards at least as high as those set by the EU.”

While commending the UK Government's past leadership on business and human rights issues, the Committee has called on the Government to "lead by example and demonstrate the same behaviour it expects from business". The Committee criticised Government guidance on human rights considerations relating to public sector procurement, recommending that the Government should exclude companies that fail to undertake appropriate and effective human rights due diligence from public sector contracts. In the view of the Committee, export credit and other Government financial incentives to companies operating overseas should be withheld on the same grounds. The Committee also recommended that companies found to be responsible for human rights abuses, either by the Courts or by the UK National Contact Point, should be excluded from public sector contracts "for a meaningful period".

The Joint Committee on Human Rights comprises 12 members appointed from the House of Commons and House of Lords. The Committee has a mandate to examine matters relating to Human Rights within the UK including to scrutinise legislation and the UK's compliance with its international human rights obligations. The current membership comprises 4 members of the Labour Party, six Conservatives, one Liberal Democrat and one crossbench peer (Lord Woolf).

[Business and Human Rights hub](#)

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