

Preparing for greater supply chain transparency

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Preparing for greater supply chain transparency

Earlier this year the UK passed the Modern Slavery Act 2015 (the Act). Given its title, you may think that the Act has little relevance to your business. However, the Act

introduces new and far reaching reporting obligations on the presence of slavery and human trafficking in your global supply chains.

Background

The Act introduces two main offences concerning holding another person in slavery, servitude or forced labour and arranging or facilitating the travel of another person with a view to that person being exploited.

The more relevant concern for many businesses in the UK lies in the so-called 'Transparency in supply chains' (**TiSC**) provisions which require commercial organisations to prepare a slavery and human trafficking statement (the **Statement**) for each financial year. Organisations must report on the steps, or absence of steps, taken to ensure there is no slavery or human trafficking offences¹ taking place in their business or in any of their supply chains.

¹ Slavery and human trafficking " includes conduct which constitutes an offence under: (i) section 1, 2 or 4 of the Act, (ii) section 1, 2 or 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2 (N.I.)) (equivalent offences in Northern Ireland), (iii) section 22 of the Criminal Justice (Scotland) Act 2003 (asp 7) (traffic in prostitution etc), (iv) section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking for exploitation), (v) section 47 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (slavery, servitude and forced or compulsory labour), or conduct which would constitute an offence in a part of the United Kingdom under any of those provisions if the conduct took place in that part of the United Kingdom.

Timing

It is anticipated that the obligations will take effect in the Autumn of 2015 and that organisations will have until the end of the current financial year to produce their first statement. This means that you need to start assessing now

whether you are caught and, if so, how to comply. Guidance to accompany the new regime is expected to be published over the coming months.

Will you be affected?

The transparency obligations apply to all commercial organisations (corporate bodies and partnerships, wherever incorporated or formed) which (i) carry on a business or part of a business in the UK (the **Jurisdiction Requirement**) and (ii) have a turnover above a certain minimum threshold (the **Turnover Requirement**).

The Government made it clear in its February consultation that there is no materiality to be applied to the Jurisdiction Requirement ie an entity may be caught even if only a small part of its business is conducted in the UK.

In terms of the Turnover Requirement, the stated intention is to only catch larger businesses. A public consultation has been undertaken to establish what the turnover threshold should be. The consultation proposes a threshold of anywhere between £36 million and £1 billion but current reports suggest that a threshold of around £60 million is likely.

It is intended that turnover will be calculated in accordance with the Companies Act 2006 ie the total

amount of revenue derived from all sources, after deduction of trade discounts, VAT and any other taxes.

Importantly, the February consultation proposed that the turnover of a company carrying on all or part of its

business in the UK should, for the purposes of determining whether it qualifies for the requirements, include the turnover of all of its subsidiaries (whether incorporated in the UK or elsewhere).

Preparing the statement

If you are caught, the basic requirement is to produce a statement confirming:

- the steps you have taken to ensure that slavery and human trafficking are not taking place directly in your own business or in any of your supply chains; or
- that you have taken no steps to confirm the existence of slavery or trafficking.

If you decide to take steps to investigate and report, the Act suggests information that the Statement may include, namely:

- a brief description of an organisation's business model and supply chain relationships;
- an organisation's policies relating to modern slavery, including due diligence processes and the training available and provided to those in supply chain management and the rest of the organisation;
- the parts of the business and supply chain most at risk and how the organisation evaluates and manages those risks; and
- relevant key performance indicators which would allow a reader to assess the effectiveness of the activities described in the Statement.

Additional guidance is expected to be issued by the Secretary of State on the contents of the Statement. It is anticipated that the content of Statements may differ between organisations provided that certain basic requirements are met. Future guidance may also take into account wider changes in reporting requirements such as the new reporting requirements on human rights in the EU Non Financial Reporting Directive 2014. This Directive, and the implementing UK legislation, will contain more general provisions on human rights disclosures in strategic reports of eligible companies.

A company only needs to report on its supply chains. The mere fact that it qualifies does not mean it has to report on the supply chains of all group companies. The only exception to this is where a parent and its subsidiary companies qualify (in their own right) and are each required to produce a Statement. In this case, an aggregated Statement covering all those entities can be produced.

Senior members of the organisation must approve and execute the Statement. For companies, the Statement must be approved by the board and signed by a director.

How far up your supply chains do you need to go?

The Act does not distinguish between upstream and downstream supply chains. However, it is anticipated that the obligations will only apply to upstream ie in respect of goods and services being supplied to the organisation.

Importantly, the Act also does not make clear how far up the supply chain you need to go. Should you, for instance, trace back to the extractive phase? Indications so far suggest that this should be the approach which potentially widens the obligations significantly. It is expected that the guidance will add some clarity to this.

Publication

The homepage of your website must have a prominent link to the Statement.

Where one Statement is produced for a parent and its subsidiaries, there must be a link to the Statement on the

homepages of both the parent's and the subsidiaries' websites.

If a company does not have a website, it must provide a copy of the Statement, within 30 days, to anyone who requests it.

Implications

It is important to note that the Act itself imposes no legally binding requirements on an organisation to conduct due diligence on its supply chains. The obligations are, on their face, concerned with reporting. However, given the increasing focus from NGOs and stakeholders on human rights compliance issues, pressure is likely to be brought to bear on those organisations which report that no action has been taken.

At present, there is flexibility on the content of the Statement. This will be critical in the early years of the regime when organisations may struggle to obtain the required information. There are numerous examples of environmental obligations which necessitate obtaining

product information from suppliers and where it has proved very difficult to obtain the information or carry out any reliable diligence. This is particularly so when dealing with jurisdictions which do not have equivalent obligations. Organisations may also need to commit significant resources to conduct due diligence at a level which satisfies its stakeholders and customers. As such, in the early years we may see many Statements reporting on the actions that have been taken rather than a complete picture.

One of the immediate issues for businesses may be the relative difficulty of obtaining reliable and comprehensive information from supply chain operators.

What should you be doing now?

Whilst the requirements have still to take effect, given the lack of any transitional arrangements, you should start to prepare now. Steps you may wish to take include:

- as a first step, assessing whether you are caught by these requirements. For many organisations, this will be a straightforward question. For others, you will need to decide, on an entity by entity basis, whether you are carrying on business in the UK and therefore caught. You should continue to monitor the publication of the qualifying threshold;
- if you are caught, deciding on the type of statement you wish to make in the initial reporting years. This will help you to gear the essence of your due diligence;
- assessing the current level of information on your supply chains. What additional information do you need and how reliable is the existing data? As necessary, prepare to start engaging with your direct and indirect suppliers;
- considering the most effective ways of obtaining information from your suppliers. This could be through written Q&A and/or certifications. Consider the need to audit suppliers' facilities;
- assessing the need for training within the organisation and your supply chains on best practice in human rights compliance;
- reviewing how these obligations fit within any wider mandatory or voluntary reporting undertaken by the business.

Contacts

If you require advice on any of the matters raised in this document, please call any of our partners or your usual contact at Allen & Overy.

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