

The Modern Slavery Act 2015: Transparency Reporting Provisions

What do the new UK transparency reporting provisions mean for companies?

The UK is at the forefront of the global move to tackle human trafficking and prevent modern forms of slavery by introducing the Modern Slavery Act 2015 (the Act) earlier this year.

In this *Client Alert*, we focus on the new transparency reporting provisions, which the Act introduced and which are in force as of the end of October 2015. The provisions require companies with a turnover above a certain threshold to report on the steps they are taking to address human trafficking and modern slavery in their supply chains.

Modern Slavery and Human Trafficking

Modern slavery takes a wide variety of forms, including forced or compulsory labour, child slavery, and early and forced marriage. Human trafficking concerns the arranging or facilitating of travel of a person with the intent to exploit him or her.

Transparency Reporting Provisions

The Act's transparency in supply chain provisions require that relevant commercial organisations must publish an annual statement for each financial year setting out the steps the organisation has taken during that year to address slavery and human trafficking.

Which Companies Must Report?

The supply chain provisions apply to:

- **Commercial organisations**, defined as a body corporate or partnership (wherever incorporated or formed) which carries on a business (including a trade or profession), or part of a business, in any part of the UK;
- who supply goods and services; and
- have a **total turnover of £36 million or more**. The turnover figure is calculated by taking into account the turnover of the organisation and its subsidiary undertakings.

If a parent and one or more subsidiaries in the same group are required to produce a statement, the parent can produce a statement which the other group companies use to meet their requirement, provided the statement fully covers the steps that each of the organisations has taken.

What Must the Statement Include and What Should the Statement Include?

The statement must set out the steps the organisation has taken in the previous financial year to ensure that slavery and human trafficking are not taking place in any of its supply chains and in any part of its own business.

The Act suggests that the statement may include information about:

- (a) The organisation's structure, its business and its supply chains
- (b) The organisation's policies in relation to slavery and human trafficking
- (c) The organisation's due diligence processes in relation to slavery and human trafficking in its business and supply chains
- (d) The parts of the organisation's business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps the organisation has taken to assess and manage that risk
- (e) The organisation's effectiveness in ensuring that slavery and human trafficking are not taking place in its business or supply chains, measured against such performance indicators as the organisation considers appropriate
- (f) The training about slavery and human trafficking available to the organisation's staff

An organisation can opt to state "no steps have been taken", although such a decision should be taken with caution.

Where Must the Statement Be Published?

The organisation must publish the statement on their website and include a link to the statement in a prominent place on the website's homepage, or alternatively provide a copy on request.

When Must the Statement Be Published and What Time Period Must the Statement Cover?

The government has confirmed it expects organisations to publish their statements as soon as reasonably practicable after the end of the financial year, and at the latest within six months of year-end.

Statements are required from companies with financial years ending on or after 31 March 2016. However, governmental guidance indicates that future statements should include steps taken from October 2015, *i.e.* the date the requirement came into force

Guidance - How Should Companies Comply?

The statement must be approved by the board of directors and signed by a director, ensuring senior-level compliance.

Companies preparing to make an appropriate statement should consider the following steps:

- **Risk assessment/internal due diligence:** Conducting a risk assessment to identify key risk areas, for example, if temporary or seasonal staff are regularly employed. This will be of particular importance in complex businesses with multinational supply chains.

There may be specific risks inherent in particular sectors and geographic areas. In this regard, the Independent Anti-Slavery Commissioner, a role created by the Act, has issued a Strategic Plan for 2015-2017, which identifies particularly vulnerable sectors, including hospitality, domestic work, agriculture and the fishing industry, and specific regional risk areas including Nigeria, Romania and Vietnam, in that they provide potential victims of modern slavery in the UK.

- **External due diligence/supply side adjustments:** Conducting due diligence on current and future suppliers to assess the risk of slavery or human trafficking in the suppliers' supply chains. This may involve including the issue in selection and procurement processes, or in tender requirements. In addition, subject to risk profile, a company may wish to implement procedures to monitor suppliers, potential and current, so as to identify any issues of concern; such procedures could include the use of risk management databases and/or external independent experts or site visits.

Further, companies may wish to include anti-slavery provisions in supplier contracts and instituting codes of conduct, either at the commencement of supplier relationships, or at contract renewal.

- **Internal/external policies and staff training:** Instituting appropriate internal policies, such as a provision for training to staff to raise awareness, communicate appropriate red flag indicators to help staff identify risks, and enable them to spot and report potential issues. In that context, companies should consider and publicise new processes or reporting procedures for whistleblowing of any suspicious activities, and give thought to remediation plans.

Further, other internal policies should be revisited, such as the anti-money laundering policy to encompass slavery or human trafficking risks and offences.

Companies may want to designate responsibility for compliance with the Act to a specific individual.

What Are the Consequences of Non-compliance?

If an organisation does not publish a statement, the Home Secretary can seek an injunction in the High Court to require the organisation to do so. If an organisation fails to comply with an injunction, the organisation will be in contempt of court and liable for an unlimited fine. However, the government envisages that consumers, investors and NGOs will need to engage and/or apply pressure where they believe a business has not taken sufficient steps to address slavery and human trafficking in its supply chains.

Conclusion

The new transparency reporting provisions in the Modern Slavery Act may at first glance seem straightforward. However, companies need to bear in mind the public nature of the statements, which mean that various stakeholders, such as customers, investors and the general public are able to scrutinise and critique steps taken in this area. Indeed, the Independent Anti-Slavery Commissioner has already indicated his adherence to a "name and shame" policy. As such, companies would be well advised to ensure that their anti-slavery and human trafficking practices and procedures are robust and effective.

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