

Modern Slavery Act 2015 – call for transparency

Introduction

The Modern Slavery Act 2015, which received Royal assent in March this year, is the first of its kind in Europe, and one of the first in the world, to specifically address slavery and trafficking in the 21st century. The Global Slavery Index estimates that 36mn people are living in modern slavery today, defined in the Modern Slavery Act by the offences of slavery, servitude, forced or compulsory labour, and human trafficking. There were an estimated 13,000 victims of slavery in Britain alone in 2013, with millions more forced into unacceptable working conditions in the global supply chains of UK businesses.

The Walk Free Foundation estimates that eliminating modern slavery will channel roughly \$131bn of spending per year into non-exploitative markets and businesses and may increase global GDP by as much as \$650bn annually.

Application of provision 54 – Transparency in supply chains etc.

From 29 October this year, commercial organisationsⁱ in any sector with a turnover of £36 million or more who do business in the UK are required to disclose, in an annual Slavery and Human Trafficking Statement, the steps they are taking to address modern slavery in their business and supply chain. If an organisation has taken no such measures, this must be disclosed. The Act is estimated to apply to over 12,000 businesses.

The transparency requirement applies to any incorporated company (regardless of where it was incorporated) or partnership, including limited liability partnerships, (irrespective of the place of formation) that carries on its businessⁱⁱ, or part of its business, in the UK. The obligations therefore also apply to overseas businesses providing goods or services within the UK. Furthermore, it does not matter if the organisation pursues primarily charitable or educational aims or purely public functions.

In its guidanceⁱⁱⁱ, the government refers to applying a 'common sense approach, meaning that organisations that do not have a demonstrable business presence in the UK will not be caught by the provision. Likewise, having a UK subsidiary will not, in itself, mean that a parent company is carrying on a business in the UK, since a subsidiary may act completely independently of its parent or other group companies.

Parent and subsidiary organisations

If any organisation in any part of a group structure meets the requirements, it is legally required to produce a statement. Where a parent and one or more subsidiaries in the same group are required to produce a statement, the parent may produce one statement that subsidiaries can use to meet this requirement (provided that the statement fully covers the steps that each of the organisations required to produce a statement have taken in the relevant financial year).

If a foreign subsidiary is part of the parent company's supply chain or own business, the parent company's statement should cover any actions taken in relation to that subsidiary to prevent

modern slavery. Where a foreign parent is carrying on a business or part of a business in the UK, it will be required to produce a statement.

Content of the annual statement

The government's aspiration is that the disclosure measure will both require businesses to be transparent about what they are doing but also increase competition to drive up standards, leading to improved worker conditions and greater consumer confidence in the products they buy.

The Government has not been prescriptive about the layout or specific content of the statement. It is up to organisations how they present information in the statement and how much detail they provide. However, organisations must include in the statement all the steps they are taking to address modern slavery in their business and supply chain. The Act includes guidance on the type of information that a statement *may* include:

- A description of the organisation's structure, business model and supply chain relationships;
- Information on policies and due diligence processes in relation to slavery and human trafficking;
- The parts of the business and supply chains at risk of slavery and human trafficking and the steps taken to assess and manage that risk;
- The effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators considered appropriate; and
- Any training available to staff.

Annex E of the government guidance provides information on the type of activity that could be included under each heading and why such information would be useful in a statement. This is intended as a guide only.

Senior level sign-off

In the case of an incorporated entity, the statement must be approved by the board and signed by a Director (or equivalent). In the case of a limited liability partnership, the statement must be approved by the member and signed by a designated member (or in the case of a partnership, signed by a partner). Furthermore, the homepage of a company's website must contain a prominent link to the statement.

Timelines

The requirement for organisations to publish a statement was commenced on 29 October 2015. However, many organisations may not be in a position to produce a statement immediately. Therefore, transitional provisions have been included to allow organisations sufficient time to understand the requirement and produce a statement. Businesses with a year-end of 31 March 2016 will be the first businesses required to publish a statement.

To ensure the information contained is relevant and up to date, the government expects organisations to publish their statements as soon as reasonably practicable after the end of each financial year in which they are producing the statement. Organisations may well choose to publish the statement alongside any other annual or non-financial reports they are required to produce. Organisations are encouraged to report within six months of the financial year end.

Failure to disclose

The Secretary of State may apply to the High Court for an injunction^{iv} against any organisation that fails to comply with any of the requirements relating to the Slavery and Human Trafficking Statement. Failure to comply with the injunction can lead to an unlimited fine.

The assumption is that pressure groups will target businesses and subject them to reputational campaigns to force annual disclosure. The government has also said that it may 'name and shame' businesses which drag their heels.

What organisations could do now

- Decide on the type of statement to make in the initial reporting years and start assessing current levels of information available within operations and supply chains.
- Revisit human rights and purchasing policies and codes of conduct to include references to modern slavery.
- Identify and analyse the risks of human trafficking and slavery in the supply chain.
- Engage direct and indirect suppliers and develop a due diligence system to obtain reliable information (or refine existing processes).
- Require direct suppliers to certify that materials incorporated into products comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.
- Conduct audits of suppliers to evaluate supplier compliance with company standards for human trafficking and slavery in supply chains.
- Create and maintain internal accountability standards and procedures for employees and contractors and taking action on those who fail to meet company standards regarding slavery and trafficking.
- Provide company employees and managers, with direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.

Interplay with other reporting obligations

Transparency regarding human rights disclosures is already a requirement of the UK 'Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013' which require listed companies to include information about their policies on human rights as well as the effectiveness of those policies. Furthermore, the Non-financial Reporting Directive, 'EU Directive 2014/95/EU', includes a mandatory requirement to report on steps taken to prevent human rights abuses and will apply to large businesses^v from 2017.

Where organisations are already transparently reporting to meet these requirements, (and/or report using voluntary initiatives in relation to human rights such as the UN Guiding Principles), they will need to review how these obligations fit within the requirement set out in the Modern Slavery Act 2015.

How we can help

EY has been a key advisor to The Shift Project in their development of the reporting and assurance frameworks underpinning the UN Guiding Principles and have recently assisted in redeveloping the UN Global Compact Guidance note on designing Human Rights Policies for business. We have a global network of specialists in human rights, supply chain and forensic investigation and can help organisations to:

- Draft policies in relation to slavery and human trafficking and support their effective implementation.
- Carry out risk assessment to identify areas at risk of forced / bonded labour or human trafficking.
- Apply due diligence in operations and supply chain proportionate to risks identified.
- Provide monitoring support to ensure on-going compliance.
- Develop indicators for internal performance measurement.
- Assist with the drafting of the annual statement or verify external disclosures.

Contacts

For more information about the legislation or ways in which we can support, please contact:

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ⁱ A commercial organisation is covered by the transparency subsection if it:

(a) supplies goods or services, and

(b) has a total turnover of not less than an amount prescribed by regulations made by the Secretary of State, ie £36mn.

“Commercial organisation” means:

(a) a body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom, or

(b) a partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom, and for this purpose “business” includes a trade or profession.

ⁱⁱ The courts will be the final arbiter as to whether an organisation ‘carries on a business’ in the UK taking into account the particular facts in individual cases.

ⁱⁱⁱ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471996/Transparency_in_Supply_Chains_etc__A_practical_guide__final_.pdf

^{iv} Or in Scotland, civil proceedings for the specific performance of a statutory duty under section 45 of the Court of Session Act 1988.

^v Public interest entities with an average of more than 500 employees during the financial year and with either: a balance sheet total of more than €20m, or a net turnover of more than €40m.