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The UK Modern Slavery Act: Increasing transparency in supply chains



The Modern Slavery Act requires businesses in the UK to be transparent about what they are doing to tackle modern slavery, not just within their own operations, but in their supply chains as well. Many businesses will need to rethink the way they tackle compliance issues, and build on their relationships with suppliers, to ensure they don't fall short on this new reporting requirement.

The Modern Slavery Act 2015 addresses the problem of slavery and human trafficking in the 21st century. It is designed to improve law enforcement tools, strengthen criminal penalties and deliver better support and protection for victims.

The Act consolidates existing criminal offences for slavery and trafficking, creates two new civil orders to allow courts to intervene before a crime has occurred, establishes an Anti-Slavery Commissioner, and provides for the protection and compensation of modern slavery victims. Crucially, it also requires businesses to be transparent about what they are doing to tackle this challenging issue, not just within their own operations, but in their supply chains as well.

The new reporting obligation: who will need to comply?

The Act requires commercial organisations: (i) carrying on all or part of a business in the UK; (ii) which supply goods or services; and (iii) which have a turnover of £36m, to prepare and publish a 'slavery and human trafficking' statement for each financial year. The reporting obligation came into effect in October 2015.

The statement must describe the steps the organisation has taken during that 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. Technically businesses can comply by publishing a statement that no steps have been taken, although this approach risks attracting negative stakeholder and media attention.

The minimum turnover threshold has been set at £36m in the government's view, these businesses are better placed to influence conduct in the sector they cover, and more likely to have the purchasing power and influence to create effective change within 'their' supply chain. There remains some uncertainty around how the obligation will apply to complex multi-national groups, but government guidance published on 29 October 2015 provides further information on which organisations must comply with the reporting obligation

Equivalent legislation in force in California sets a US\$100m turnover threshold.

What does the statement need to cover?

To meet the requirements of the Act, the statement **must** describe the steps the organisation has taken 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. It **may** also include information about:

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

The Act provides for statutory guidance by the Secretary of State on the contents of the statement, and this has also been the subject of Government

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consultation. The intention is that clear and informative guidance will help prevent the reporting requirement becoming a simple tick-box exercise.

To ensure its importance is recognised, the statement must be approved at the highest level – for example, in a company it must be approved by the board of directors and signed by a director.

Where does the statement need to be published?

Most businesses caught by the reporting requirement will have a website, in which case the statement must be published on that website, and a link to it must be included in a 'prominent place' on the homepage. This is so it will be visible to interested members of the public and NGOs.

What practical steps will affected businesses need to think about?

Businesses likely to be affected will need to start thinking about what they need to do to ensure they can make the required statement, and what its contents should be. For many businesses, this is likely to include some or all of the following:

- > an information-gathering exercise to understand what steps they currently take, if any, to ensure slavery and human trafficking is not taking place. Existing measures may vary across business lines and functions and may be implemented with varying degrees of effectiveness
- > particularly for businesses with complex, multi-national supply chains, ensuring that the business is able to identify members of those supply

chains, as well as obtain information on the measures suppliers take to ensure slavery and human trafficking is not taking place

- > gaining an understanding of how the business does, or could, engage with suppliers on this topic (e.g. through supplier pre-screening, self-reporting, auditing, inclusion of relevant contractual provisions, dialogue, capacity building, training, etc.) and when (e.g. at points of increased leverage, such as during contract tendering or renewals)
- > where the business has a large number of suppliers, a risk assessment to determine which parts of the business and which supply chains are most at risk of slavery and human trafficking so that efforts can be focused on those areas
- > where information or action gaps are identified, the design and implementation of measures to ensure the business is able to describe with sufficient confidence where it perceives gaps and what its plans are to strengthen and supplement steps it already takes

These actions, and any others a business undertakes, will need to be adequately resourced and implementation will likely take time. Some businesses may elect

to tackle (and report on) these in stages, as part of a review of their existing compliance programmes and risk management processes.

Businesses will also need to be prepared to engage with interested stakeholders following the publication of their statement. This may require delivering extra training for public relations and communications teams and/or the preparation of FAQs, for example.

When does the reporting requirement start?

The reporting obligation came into effect in October 2015 and does not apply to financial years ending before 31 March 2016.

Larger businesses and those with complex supply chains will want to start considering the requirements of the Act now, so that they are well prepared in advance.

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