

# Corporate Reporting under the Modern Slavery Act 2015

It is expected that from October this year, certain commercial organisations will be required to report on steps that they have taken to ensure that slavery and human trafficking is not taking place in their business and supply chains. Accordingly, businesses need to consider now whether they are caught by the Act and if so, how to prepare to comply with the new reporting requirement.

## Stamping out modern slavery

The Modern Slavery Act 2015 (the **Act**) is intended to improve law enforcement in this area by consolidating existing slavery, servitude, forced or compulsory labour, and human trafficking offences; introducing two new civil orders to assist the courts to prevent modern slavery; establishing an Anti-Slavery Commissioner; and providing for the protection of victims of such offences.

The Act also includes provisions on "transparency in supply chains" that have been hailed as a "truly ground-breaking measure" with the policy rationale being that, by requiring businesses to disclose what they are doing to eliminate slavery in their supply chains, they will be incentivised to take the issue seriously. (Click [here](#) for more information).

## Which businesses are affected?

Under section 54 of the Act, a commercial organisation which:

- (a) supplies goods or services; and
- (b) has a turnover of not less than an amount that will be prescribed by regulations (see below)

must prepare a slavery and human trafficking statement for each financial year, stating the steps that it has taken during that financial year to ensure that slavery and human trafficking is not taking place in any part of its own business and in any of its supply chains (or issue a statement that it has taken no such steps) (the **Reporting Requirement**).

## Which businesses are a "commercial organisation" subject to the Reporting Requirement?

The Act defines a "commercial organisation" as a body corporate or partnership, *wherever incorporated or formed*, which carries on a business, or part of a business, in any part of the UK. For this purpose, "business" includes a trade or profession. The Government has made clear that there is no requirement to meet a certain level of 'footprint' in the UK. Accordingly, a company incorporated outside of the UK will be subject to the Reporting Requirement if it carries on a business, or part of a business, in any part of the UK.

## The turnover threshold

The Government intends to set the annual turnover threshold at £36 million. Further, the Government has indicated that:

- turnover will be the total net turnover of the commercial organisation, which, in line with the UK Companies Act, will be taken to mean the total amount of revenue derived from all sources, after deduction of trade discounts, value added tax and any other taxes based on the amounts so derived; and
- the turnover of an organisation will include the turnover of all of its subsidiaries.

## What does the slavery and human trafficking statement need to cover?

The Act does not establish mandatory content requirements for a statement. Rather, the Act states the kind of information that *may* be included in an organisation's statement, namely:

- the structure, business and supply chains of an organisation;
- slavery and human trafficking policies;
- due diligence processes in relation to slavery and human trafficking in an organisation's business and supply chains;
- the parts of an organisation's business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps an organisation has taken to assess and manage that risk;
- an organisation's 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; and
- the training about slavery and human trafficking available to its staff.

The Act provides that the Home Secretary may issue guidance about the duties imposed on commercial organisations by the Reporting Requirement. Such guidance may in particular include further provision about the kind of information which may be included in a slavery and human trafficking statement. It is expected that guidance will be issued to coincide with the Reporting Requirement coming into effect. Although the guidance is expected to set out the kinds of information that might be included in a statement, the government has stated that it fully expects slavery and human trafficking statements to differ from business to business. Each organisation therefore needs to consider what is appropriate to its own situation.

## How must the slavery and human trafficking statement be disclosed?

If the organisation has a website, it must publish the statement on that website and include a link to the statement in a prominent place on its homepage. If the organisation does not have a website, it must provide a copy of the statement to anyone who makes a written request for one within 30 days from the date the request is received.

The statement must be:

- in the case of a body corporate, approved by the board of directors and signed by a director (or equivalent);
- in the case of a limited liability partnership, approved by its members and signed by a designated member;
- in the case of a limited partnership, signed by a general partner; or
- if the organisation is any other kind of partnership, signed by a partner.

Generally, an organisation need only prepare a statement in respect of its business and supply chains, and not those of other group companies. However, the Government has indicated that in practice, where a parent company and a subsidiary company are both required to produce a statement, one single statement may be produced as long as the statement covers the full business and supply chains of both the parent and the subsidiary and is placed on both the parent's and the subsidiary's websites.

## Enforcement

There is no fine for failing to comply with the Reporting Requirement. Rather, the Secretary of State may enforce the Reporting Requirement by seeking an injunction in the English courts to compel the organisation to issue a statement. The Government has indicated that it expects pressure from civil society, shareholders and competitors to encourage organisations to implement the Reporting Requirement.

## When does the Reporting Requirement come into force?

The Act came into force in July 2015, but the Reporting Requirement itself will only come into effect once the Government has issued regulations establishing the minimum turnover threshold. It is expected that the Government will issue such regulations in October 2015.

The Government has indicated that it will introduce transitional provisions to take account of the position of organisations whose financial year end is within close proximity to the date that the Reporting Requirement comes into force.

## So what does this mean for you?

Organisations should start thinking about the implications of the Act now, and in particular, consider:

### **Is your organisation subject to the Reporting Requirement?**

For many organisations, this will be clear-cut. However, for others, this may require an information gathering exercise to identify which entities within a corporate group may be caught by the Reporting Requirement.

### **Will your organisation publish a statement of the steps it has taken?**

Although it is lawful under the Act to publish a statement that no relevant steps have been taken, it is likely that many organisations will decide to publish a statement of the steps taken to address slavery and human trafficking, in preference to stating that no such steps have been taken. An organisation wishing to publish such a statement will need to consider the level of detail it will include and the subject matter to cover (see due diligence below). In determining content, it will be relevant to bear in mind the policy objective toward improved transparency and the UK government's expectation that businesses take "appropriate and proportionate" action to tackle modern slavery.

### **What due diligence will your organisation need to carry out to prepare a statement?**

In order to prepare a statement, organisations need to gather the information that will be used to populate that statement. This may be straightforward for some organisations; but not necessarily so for others. Although the areas that are identified by the Act are not mandatory, they provide a good framework for considering the type of information that could contribute to a meaningful statement. As a baseline, organisations are likely to want to map out their structure, business and supply chains to identify the main risks for the existence of slavery or human trafficking, and to prepare to identify measures already in place to prevent these. That assessment may also be aimed at identifying gaps that the organisation may wish to address.

How effective are your existing policies and processes in identifying whether slavery and human trafficking is taking place in your business and supply chain? Does your organisation have existing processes in place to monitor steps taken to prevent slavery and human trafficking from taking place and their effectiveness?

Engagement may be needed with members of the supply chain in order to obtain information regarding any existing measures that are in place to prevent slavery and human trafficking. Another area to investigate will be the adequacy of existing contractual provisions, identifying the extent to which these operate to minimise the risk of slavery and human trafficking in the organisation's supply chain. In preparing to make a statement, an organisation's due diligence process may well highlight gaps that it will wish to fill either prior to publication or, if that is not feasible, in the next financial year.

### **Does your organisation have policies in relation to slavery and human trafficking and how are those implemented? If not, how might the organisation go about establishing such a policy?**

Organisations may wish to consider nominating a member of senior management to be responsible for assessing existing policies; internal and external awareness of such policies; and examining possible enhancements that might be warranted. It may be that a specific policy already exists or is subsumed within a broader human rights policy or business code of conduct. Consideration should be given to appropriate enhancements to existing policies (including, for example, those relating to whistleblowing).

### **Does your organisation educate and train staff about slavery and human trafficking? Are the right staff being trained?**

Organisations may wish to implement a training program for employees (in particular, those involved in procurement or other aspects of supply chain management) and, if appropriate, members of their supply chain to raise awareness regarding slavery and human trafficking, the requirements of the Act and the organisation's policies (if any). Training might also focus on appropriate steps in the event that human trafficking or slavery is discovered in the supply chain.

### **What existing risk management procedures could be revised to address modern slavery and human trafficking?**

Organisations should consider the resources they have available or may wish to develop to manage their obligations under the Act, including the Reporting Requirement. It could be more efficient to expand or adapt existing risk management procedures and sources of performance data to expressly cover slavery and human trafficking. Such procedures may generate data that would permit publication of relevant key performance indicators.

## The trend towards greater transparency

The Reporting Requirement reflects a trend at both the national and international level towards the use of corporate reporting by regulators and policy makers to encourage transparency in supply chains (the California Transparency in Supply Chains Act is another notable example) (click [here](#) and [here](#) for further information regarding UK and European developments). The Government has also indicated that transparency in supply chains should be seen in the context of developments in the field of business and human rights following the adoption of the United Nations Guiding Principles on

Business and Human Rights in 2011 (click [here](#) for more information). Accordingly, companies would be well-advised to consider the Reporting Requirement in the context of this broader trend.

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