

Employment

The Modern Slavery Act 2015 – transparency statements

The Modern Slavery Act 2015 (the Act) is intended to tackle modern slavery by consolidating various offences relating to human trafficking and slavery. It also includes a provision for transparency in supply chains that requires all businesses with an annual turnover of £36 million or more to disclose in an annual slavery and human trafficking statement on their website what steps they have taken during the financial year to ensure their business and supply chains are slavery free. Home Office guidance was published at the end of October 2015 and statements are required for financial years ending on or after 31 March 2016.

Which businesses are covered?

Commercial organisations that supply goods or services and have a minimum total turnover of £36 million are covered. “Commercial organisations” means companies (both listed and private) and partnerships, wherever they are incorporated or formed, that carry on a business or part of a business in any part of the UK and

does therefore include foreign businesses. Organisations with no business presence in the UK are not caught. Having a UK subsidiary will not automatically mean that a parent company is carrying on a business in the UK. An organisation will be caught if it engages in commercial activities, irrespective of the purpose for which profits are made. “Business” includes a trade or profession. As the obligation applies to suppliers of goods or services, it is not limited to manufacturers and retailers; neither is it limited to any particular sector.

Summary

Commercial organisations with a turnover of £36 million or more carrying on business in the UK need to prepare a slavery and human trafficking statement each financial year, stating the steps they have taken to ensure their business and supply chains are slavery free. The statement must be published on the organisation’s website and a failure to comply can lead to an injunction.

What is meant by slavery and human trafficking?

This is defined by reference to the Act but essentially it is conduct that constitutes the offences of slavery, servitude, forced or compulsory labour and human trafficking, or would constitute an offence if the conduct took place in the UK.

Slavery is where ownership is exercised over a person; servitude involves the obligation to provide services imposed by coercion; forced or compulsory labour involves work or service exacted from any person under the menace of a penalty and for which the person has not offered himself voluntarily; and human trafficking concerns arranging or facilitating the travel of another with a view to exploiting them, even where the victim consents to the travel. The guidance gives more details of these definitions and some examples.

The turnover threshold for disclosure

The threshold has been set at £36 million, which applies to global turnover, not just UK turnover, and includes subsidiaries (even if they operate wholly outside the UK). Total turnover is the amount derived from the provision

of goods and services falling within the ordinary activities of the commercial organisation or subsidiary, after deducting trade discounts, VAT and any other taxes based on the amounts so derived.

The Home Office believes that larger businesses have the resources to undertake due diligence and take action on the results. They also have the purchasing power to exert real influence on supply chains.

Group companies

Each parent and subsidiary (whether it is UK based or not) that meets the requirements will have to produce a statement. If a foreign subsidiary is part of the parent company's supply chain or 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 business in the UK, it will be required to produce a statement. If a subsidiary also exceeds the turnover threshold, it will have to prepare a statement in its own right. If the turnover threshold applies to both the parent company and a subsidiary, the parent company can produce one statement that subsidiaries can use, as long as it fully covers the steps that each organisation has taken in the financial year and appears on both websites.

Content of the statement

The statement should be written in simple language and can include links to other documents or policies on the website. It has to include an account of the steps the organisation has taken during the financial year to ensure that slavery and human trafficking are not taking place in any of its supply chains or in any part of its business. Alternatively, the organisation can state that it has taken no such steps. Most businesses are unlikely to use the second option, as it

may lead to scrutiny and public pressure, which could impact on their reputation and profit. In addition, it is possible that ethical investment funds will decide not to invest in organisations that do not publish a full statement.

The Government has not been prescriptive about the layout or content of the statement, stating that the information will be determined by the organisation's sector, the complexity of its structure and supply chains, and the sectors and countries in which its suppliers work.

The Act provides that the statement may include information about:

- The organisation's structure, business and supply chains;
- Its policies in relation to slavery and human trafficking;
- Its due diligence processes regarding 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 and the steps it has taken to assess and manage that risk;
- Its effectiveness in ensuring that slavery and human trafficking are 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 guidance includes suggestions as to what could be disclosed under each of these headings, as well as examples of good practice. It also has sections on due diligence, performance indicators and training.

Approving the statement

Where the organisation is a company, the statement must be

approved by the board of directors and signed by a director. In the case of limited liability partnerships (LLPs), the statement must be approved by the LLP members and signed by a designated member. A partner must sign the statement for other types of partnership.

Publishing the statement

The statement must be published on the organisation's website and a link to it must be in a prominent place on the homepage, which can include part of an obvious drop-down menu. The link should be clearly marked and the guidance recommends a link such as 'Modern Slavery Act transparency statement'.

Effect of the guidance

Although there is no legal obligation to follow the Home Office guidance, if an organisation is meeting the requirements of the guidance or taking equally effective measures, it will in all probability be regarded as compliant.

Enforcement

The Home Secretary can enforce the duty to prepare the statement by way of an injunction in the High Court. A failure to comply with the injunction will be a contempt of court, which can lead to an unlimited fine. It would be surprising if the Home Secretary made such an application without significant prior warning to an organisation. However, it is likely that if enforcement action is taken it will be against a high profile organisation since this will attract greater publicity, which will be regarded as helpful in securing wider compliance with the Act.

Timing

Statements have to be prepared for each financial year. A statement should be published as soon as reasonably practicable after the end of the financial year and the guidance states that this should be done within six months of the year end. It also

notes that organisations may choose to publish the statement alongside any other annual or non-financial reports they are required to produce.

Checklist – does section 54 apply to your business?

It will apply if you can answer 'yes' to all of these questions:

- Are you a public or private company or a form of partnership?
- Do you carry on a business (including a trade or profession) or part of a business in any part of the UK?
- Do you supply goods or services?
- Do you have a total global annual turnover (including subsidiaries) of £36 million or more?

Action points

If an organisation is subject to the requirement under the Act, it should take these steps:

- Appoint someone senior to be responsible for compliance;
- Consider who to consult about the statement, such as PR advisors, the Board, trade unions and employee representatives;
- Decide which parts of the business will be covered;

- Decide how much information will be given in the statement;
- Ensure that procurement teams are aware of the new law and are asking the right questions of potential suppliers;
- Review contractual provisions within the supply chain so as to ensure that its suppliers have sufficient procedures in place to avoid falling foul of the Act;
- Assess the risk to the business – this will involve identifying potential areas and jurisdictions that pose a risk and identifying appropriate control measures and “triggers” that should lead to a review of the adequacy of those control measures;
- If it does not already have a slavery and human trafficking policy, consider introducing one;
- Think about making training available to those in supply chain management, procurement and HR teams, as well as the rest of the organisation; and

- Ensure it has systems in place to make sure that the information needed for the statement is captured in good time so that the statement can be published within six months of the year end.

Further information

The guidance is [here](#). The Government provides a 24 hour modern slavery helpline for victims, employers and members of the public on 0800 0121 700. Stronger Together is a multi-stakeholder initiative aiming to reduce modern slavery, which provides guidance, resources and a network for employers, labour providers, workers and their representatives to work together to reduce exploitation:

www.stronger2gether.org

An independent review into the Act is due to report by the end of March 2019 and may recommend some changes.

Key dates at a glance

29 October 2015

Section 54 in force

29 October 2015 to 30 March 2016

Businesses with a year end between these dates did not have to publish a statement for this financial year

31 March 2016

Businesses with a year ending on or after this date had to publish a statement for the 2015-2016 financial year

Within 6 months of the financial year end

A statement should be published by now

Each year after that

A business will need to publish an updated statement

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