

# **The UK Modern Slavery Act 2015**

What are the requirements and how should businesses respond?

# Introduction

Modern slavery is defined as slavery, servitude, forced or compulsory labour and human trafficking<sup>1</sup>. The 2016 Global Slavery Index estimates that 45.8m people in 167 countries are living in modern slavery today<sup>2</sup>. The majority are victims of exploitation in private sector activities, such as manufacturing, construction and agriculture. Forced labour and slavery is big business – the International Labour Organisation estimates that illicit profits from these crimes amount to US\$150b per year. Businesses are facing increasing pressure to tackle the crisis of modern slavery head-on as awareness grows and consumers demand more responsibility from their preferred brands. Modern slavery also represents a significant reputational risk to businesses as non-governmental organisations and the media ‘name and shame’ companies who violate human rights.

Modern slavery is a complex and often hidden crime that crosses borders, sectors and jurisdictions. In 2016, there were an estimated 11,700 victims of slavery in Britain alone<sup>2</sup>, with millions more forced into unacceptable working conditions in the global supply chains of UK businesses. The UK Modern Slavery Act (MSA) 2015 was 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. Whilst not all sections of the Act are directly applicable to business, provision 54, ‘transparency in supply chains etc.’, impacts the corporate sector. In this briefing document we set out the requirements of this provision and how companies should respond.

## Application of provision 54 – Transparency in supply chains

Provision 54 of the Act came into force on 29 October 2015. It requires commercial organisations in any sector with a global annual turnover<sup>3</sup> of £36m or more who do business in the UK 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<sup>4</sup>. If an organisation has taken no such measures, this must be disclosed. The Act is estimated to apply to over 12,000 businesses, however, there is currently no mechanism to check which companies are required to report.

The transparency requirement applies to any incorporated company or partnership, including limited liability partnerships, that carries on its business, or part of its business, in the UK. The requirement is applicable regardless of the company's geographic location,

thus the obligations also apply to overseas businesses providing goods or services within the UK. Furthermore, organisations that pursue primarily charitable or educational aims or purely public functions are also applicable under the MSA.

In its guidance, the Government refers to applying a 'common sense approach' to organisations that have a 'demonstrable business presence in the UK' being caught by the provision. Ultimately the courts will be the final arbiter of applicability, taking into account the particular facts.

The Act requires organisations to prepare and publish a statement, rather than to take any positive steps to eradicate slavery from their supply chains. However, the Government envisages that organisations that fail to take action will face commercial pressure to do so.

### 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. Having a UK subsidiary does 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. 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 that are required to produce a statement have taken in the relevant financial year).

Where a subsidiary within a group does not carry on a business or part of a business in the UK, then it will not need to produce a statement. However, if that subsidiary is part of another group member's supply chain or own business, that company's statement should cover any actions taken in relation to that subsidiary to prevent modern slavery.

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

In the interests of improving transparency, the guidance strongly encourages organisations within a group to produce statements, even where they are not legally obliged to do so and particularly so where these organisations operate in high-risk industries or locations.

### Franchise models

Some organisations operate under a franchise model. Where the turnover of a franchiser is above the £36m threshold they will be required to produce a statement. In determining the total turnover, only the turnover of the franchiser will be considered. The turnover of any franchisee using the franchiser's trademark and distributing goods or providing services will not be used in calculating the franchiser's turnover. However, franchisers who meet the turnover threshold may wish to consider the impact on their brand of the activities of franchisees in relation to modern slavery, and in doing so report on the steps taken to ensure the franchise as a whole is free from modern slavery.

Where the turnover of a franchisee is above the £36m threshold, the franchisee will be required to produce a Slavery and Human Trafficking Statement.

## Content of the annual statement

The Government has not been prescriptive about the layout or specific content of the Statement, and it is up to organisations to determine how to best present information in the statement and how much detail to provide. The guidance document suggests that the statement should be true, written in simple English that is easily understood, be succinct but cover all the relevant points and provide appropriate links to the organisation's relevant publications, documents or policies.

Organisations must include all the steps they are taking, or have begun taking, to address modern slavery in their businesses and supply chains. 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 in relation to slavery and human trafficking.
- ▶ Details of the due diligence processes the organisation undertakes in relation to its business and supply chains.
- ▶ The areas 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.
- ▶ 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.

Furthermore, CORE, Anti-Slavery International, Unicef UK, Business and Human Rights Resource Centre have published a joint guidance<sup>5</sup> setting out recommended content for a modern slavery statement.

## 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). For limited liability partnerships, the statement must be approved by the members and signed by a designated member. If the organisation is a limited partnership registered under the Limited Partnerships Act 1907, it must be signed by a general Partner, and for any other kind of partnership, the statement must be signed by a Partner.

Furthermore, the homepage of the company's website must contain a prominent<sup>6</sup> link to the statement<sup>7</sup>.

## Timelines

The requirement for organisations to publish a statement commenced on 29 October 2015. Businesses with a financial year ending on or after 31 March 2016 were the first businesses required to publish a statement for their 2015-16 financial year.

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 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.

Once an organisation has produced a statement, the Government strongly recommends that it should continue to do so in respect of subsequent financial years (even if its turnover falls below the £36m threshold), as this will enable stakeholders to monitor an organisation's progress year-on-year and will demonstrate a genuine commitment to eradicating slavery and human trafficking.

## Failure to disclose

The Act sets out that the Secretary of State may apply to the High Court for an injunction 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.

Furthermore, the mandatory disclosure requirement will enable members of the public, employees, consumers and investors to make informed decisions about which organisations they do business with. Statements (and any failure to produce them), are likely to attract the attention of non-profit organisations and sections of the media that report on social and human rights issues. The Business and Human Rights Resource Centre maintains a public record of companies' statements. As of June 2017, the updated Registry held over 2,000 statements from companies in 27 sectors, headquartered in 31 countries.

The consequences of failing to take the issue seriously, in terms of damage to reputation and competitive disadvantage, could be significant.

## What organisations can do now

Whilst the requirement under the Act is to produce a statement rather than to take positive steps to eradicate modern slavery, the Government's aspiration is that the disclosure measure will not only require businesses to be transparent about what they are doing but also increase competition to drive up labour rights standards, leading to improved worker conditions and greater consumer confidence in the products they buy. Below are suggested steps businesses can take now to position themselves well to comply with the new requirements and meet increasing stakeholder expectations:

- ▶ 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 operations and 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 compliance with company standards for human trafficking and slavery.
- ▶ Create and maintain internal accountability standards and procedures for employees and contractors and take 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 product supply chain.

## 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 requires 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 for companies to report on steps taken to prevent human rights abuses, applicable to large businesses from 2017.

International businesses may also be required to comply with provisions similar to the MSA under other jurisdiction's legislation. For example, the California Transparency in Supply Chains Act 2010 requires large retailers and manufacturers<sup>9</sup> doing business in California to disclose on their websites their 'efforts to eradicate slavery and human trafficking from [their] direct supply chain'. The California Act requires disclosures around verification, audits, certification, internal accountability and training.

Where organisations are already transparently reporting to meet other reporting requirements (and/or reporting using voluntary initiatives such as the UN Guiding Principles), they should review how these obligations fit within the requirement set out in the Modern Slavery Act 2015. Annex D of the Government's guidance document suggests how to respond to the obligation to produce a statement in the context of other reporting requirements which may be applicable.

## How we can help

Our team understand the legal requirements of the Act, Government requirements and your stakeholders' expectations. We have advised businesses across multiple sectors on the development of internal governance structures and policies as well as risk assessment and supply chain due diligence measures. Using our insights from the market, we support our client's efforts to issue transparent external disclosures.

EY was involved in the consultative process, led by Shift and Mazars, to develop the *UN Guiding Principles Reporting Framework* and its assurance guidance. We recently supported a publication by Shift assessing the maturity of companies' human rights reporting<sup>9</sup>. We are well positioned to support businesses on MSA compliance as well as wider human rights risk management and reporting.

We have a global network of specialists in human rights and responsible sourcing, with experience in helping organisations to:

- ▶ Draft and/or review policies in relation to human rights (or slavery and human trafficking specifically), and support their effective dissemination and implementation.

- ▶ Identify areas of operations and/or suppliers at risk of human rights violations including forced/bonded labour or human trafficking.
- ▶ Provide human rights training and supplier capacity building.
- ▶ Advise on and implement due diligence measures, including supplier questionnaires, supplier engagement and audits.
- ▶ Provide monitoring support to facilitate on-going compliance.
- ▶ Design or review grievance mechanisms.
- ▶ Develop internal reporting processes and indicators for performance measurement.
- ▶ Assist with the drafting of the annual statement or verify external disclosures.

## Let's continue the conversation

For more information about the Act or to find out how we can support your organisation, please contact:



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## References

<sup>1</sup>As defined in the UK Modern Slavery Act 2015.

<sup>2</sup>Global findings, Global slavery index, (2016). Accessed via: <https://www.globalslaveryindex.org/findings/>

<sup>3</sup>Total turnover is calculated as:

- a. The turnover of that organisation
- b. The turnover of any of its subsidiary undertakings (including those operating wholly outside the UK).

'Turnover' means the amount derived from the provision of goods and services falling within the ordinary activities of the commercial organisation or subsidiary undertaking, after deduction of:

- i. Trade discounts
- ii. Value added tax
- iii. Any other taxes based on the amounts so derived

<sup>4</sup>The Government's guidance sets out that 'For the purposes of this requirement, 'supply chain' has its everyday meaning'.

<sup>5</sup>*Recommended content for a modern slavery statement*, Core with contributions from Anti-Slavery International, Business and Human Rights Resource Centre (BHRRC) and Unicef UK, (2017). Accessed via: [http://corporate-responsibility.org/wp-content/uploads/2017/06/Core\\_RecommendedcontentFINAL-1.pdf](http://corporate-responsibility.org/wp-content/uploads/2017/06/Core_RecommendedcontentFINAL-1.pdf)

<sup>6</sup>The Government's guidance defines 'prominent' to mean that a modern slavery link is directly visible on the home page or part of an obvious drop-down menu on that page. The link should be clearly marked so that the contents are apparent.

<sup>7</sup>For organisations with more than one website the Government's guidance recommends placing the statement on the most appropriate website relating to the organisation's business in the UK. Where there is more than one relevant website, the guidance suggests placing a copy of the statement or a link to the statement on each relevant website.

<sup>8</sup>The law applies to any company doing business in California that has annual worldwide gross receipts of more than \$100 million and identifies itself as a retail seller or manufacturer on its California tax return.

<sup>9</sup>*Human Rights Reporting: Are companies telling investors what they want to know?*, The Shift Project, (2017.) Accessed via: [https://www.shiftproject.org/media/resources/docs/Shift\\_MaturityofHumanRightsReporting\\_May2017.pdf](https://www.shiftproject.org/media/resources/docs/Shift_MaturityofHumanRightsReporting_May2017.pdf)

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