

1. What is the Modern Slavery Act 2015 and Why Do Businesses Need to Know About It?

The Act deals with a variety of matters relating to slavery and human trafficking. The most relevant section for businesses is section 54 which will require commercial organisations over a certain size to disclose what activities they have undertaken to eliminate slavery and human trafficking from their supply chains and their own business.

2. What is this New Disclosure Obligation?

Affected businesses will be required to produce a so-called “slavery and human trafficking statement” every financial year that sets out the steps they have taken during the financial year to ensure that slavery and human trafficking is not taking place in any of their supply chains or in any part of their own business. If they have not taken such steps, this must be expressly stated.

Although it will be entirely possible for businesses to comply with this new duty by simply stating that they have taken no steps during the relevant financial year to ensure that their business and supply chains are slavery free, the Government hopes that the risk of negative publicity (from consumers, the public, investors, etc.) will be sufficient to ensure that affected businesses feel compelled to take some steps in this direction.

Businesses will be required to publish this statement on their website, if they have one, and there must be a prominent link to the statement on the homepage. If a business does not have a website it must provide a copy of the statement to anyone who requests one in writing, within 30 days of the request.

3. What is “Slavery and Human Trafficking”?

The term covers a number of specific offences under the Act but in very general terms “slavery” is where ownership is exercised over a person, where individuals are coerced into providing their services or do so under threat of a penalty. “Human trafficking” covers arranging or facilitating the travel of individuals with a view to exploiting them.

Slavery and human trafficking are acknowledged to be a global problem, with the UN and other supranational organisations estimating that the modern slavery and human trafficking trade is worth a minimum of US\$32 billion per year. Those sectors most likely to be affected are construction, agriculture, textile, security, food processing and packaging, and hospitality and tourism.

4. What Businesses Will Be Affected by this New Disclosure Obligation?

Businesses will be affected if they:

- **are a commercial organisation**, i.e. a business or partnership (whether or not incorporated or formed in the UK) which carries on a business or part of a business in the UK. It will therefore catch foreign businesses and not just UK businesses;
- **supply goods or services**; and
- **have a total annual turnover of not less than £36 million** – how total turnover is to be calculated is to be determined by separate Regulations which have yet to be issued, but we understand that it will include the turnover of subsidiaries and will apply to global and not just UK turnover.

The Government has estimated that at least 12,260 companies will be affected by this new disclosure obligation. It is targeting large businesses initially because it believes they have the resources to undertake the necessary due diligence and also sufficient purchasing power and influence to create effective change within a supply chain.

5. What Information Must Be Included in a Slavery and Human Trafficking Statement?

The Act does not set out what form a slavery and human trafficking statement must take. Instead it sets out six suggestions as to what information should be included:

- a) the organisation’s structure, business and its supply chains
- b) its policies in relation to slavery and human trafficking (so creating an implicit pressure to introduce such policies)
- c) its due diligence processes in relation to slavery and human trafficking in its business and supply chains
- d) the parts of its business and supply chain where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk
- e) 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
- f) the training about slavery and human trafficking available to its staff

6. Is There Any Guidance Available for Businesses on What They Need to Do?

The Government has confirmed that it will be producing a more detailed guidance on the new duty, including on the sort of information that should be included in a slavery and human trafficking statement. This will be published to coincide with the new duty coming into force in October 2015.

7. Who Within the Business Will Be Responsible for Producing This Statement?

This will be a matter for each business to decide. The statement will, however, have to have the appropriate support and approval from senior management. For companies this means the Board of Directors must approve the statement and it must be signed by a director. There are equivalent provisions for partnerships.

8. When Does This New Obligation Come into Force?

The Government intends to bring the new disclosure obligation into force in **October 2015**. To give businesses sufficient time to prepare there will apparently be transitional provisions so that statements will not be required where a business's financial year end is very close to the date that the obligation comes into force. We await further details on these transitional provisions.

9. What are the Implications for Businesses If They Do Not Comply?

There will be no financial or criminal penalties for failing to comply with this new disclosure obligation. The Government will, however, have the ability to bring proceedings in the High Court for an injunction requiring an organisation to comply. It remains to be seen to what extent the Government is prepared to take such a step, especially given that it is the anticipated flak from the absence of the statement which is intended to be the incentive to comply.

In practice the most likely implications for businesses that do not set out the steps they have taken to eliminate slavery and human trafficking from their supply chains and their own business is the risk of negative publicity, the threat to brand value, company reputation and investor relations. Such statements may well become a pre-requisite for tenders for certain work from Government and other concerned bodies.

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10. What Should Businesses Be Doing Now?

Whilst we are still awaiting further guidance from the Government on the information that will need to be included in any slavery and human trafficking disclosure statement, businesses should be thinking now about how they are going to satisfy this new obligation. Steps should include:

- a) deciding which senior individual(s) within the business will be responsible for compliance
- b) thinking about what information will need to be included in the statement and pulling this together
- c) auditing the business and supply chains to help determine the level of exposure, whether or not slavery and human trafficking is a potential issue for the business and where exposure is greatest
- d) developing or updating supplier codes of conduct, tender requirements and supplier contracts to account for the issue including, for example, requirements on meeting minimum labour standards in their supply chain
- e) putting in place policies and codes of conduct to combat slavery and human trafficking in the business and supply chains
- f) identifying who will require training on the new obligations, for example, directors and employees who have direct responsibility for supply chain management and procurement
- g) consulting with individuals in the workforce who may potentially be affected
- h) ensuring there are effective grievance and whistleblowing mechanisms in place so that concerns over slavery and human trafficking may be raised

HR Departments can play a key role in introducing policies and training as well as implementing risk analysis audits, due diligence, hotlines and monitoring processes.

If you would like further information on the new disclosure obligations and/or assistance in producing a slavery and human trafficking statement, please get in touch with your usual Squire Patton Boggs lawyer or one of the contacts below.

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations nor should they be considered a substitute for taking legal advice.

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