

Modern Slavery Act 2015: New Requirements for all Businesses

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Modern Slavery Act 2015: Requirement for Annual Statements on Slavery and Human Trafficking in Businesses and their Supply Chains

New rules in the UK Modern Slavery Act 2015 require organisations to publish an annual slavery and human trafficking statement for financial years ending on or after 31 March 2016. This Insight looks at what the new rules are, who they apply to and the steps organisations will need to take in order to comply.

Which organisations have to make an annual statement?

The requirement applies to all 'commercial organisations' that provide goods or services with an annual global turnover above £36m. 'Commercial organisations' means companies or partnerships, wherever incorporated or formed, carrying on their business, or part of their business, in the UK. Non-UK companies with any part of their business in the UK are subject to the rules. However a common sense approach means that organisations without a demonstrable business presence in the UK will not be caught by the requirement.

In calculating turnover, an organisation must include its turnover and the turnover of its subsidiaries. Subsidiaries must also produce a statement, if their turnover qualifies, but they can replicate their parent organisation's statement with any necessary modifications.

When and where does the statement need to be made?

The requirements kick-in for financial years ending on or after 31 March 2016. Government guidance suggests organisations should publish their statements as soon as reasonably practicable after each financial year end, and gives a target of six months from year end. In practice, these statements may be made at the same time the annual accounts are filed.

Organisations with a website must publish the statement on it and a link should be directly visible, or part of an obvious drop down menu, on their homepage. The Government recommends labelling the link "Modern Slavery Act Transparency Statement". Organisations without a website must provide a copy of the statement within 30 days of request.

What does the statement need to say?

The slavery and human trafficking statement must either (i) set out the steps the organisation has taken in the previous financial year to ensure that slavery and human trafficking are not taking place within its business or supply chains or (ii) state that no such steps have been taken. Under the first option, the organisation is not guaranteeing its business and supply chains are slavery free, rather outlining steps taken to guard against it.

There is no prescribed form or content so organisations must determine how much detail to provide and how to present it. The appropriate level of information will be determined by the sector and jurisdictions in which the organisation and its supply chains operate. The Act does outline the types of issues that organisations may want to address, namely:

- organisational structure and business and supply chains (e.g. sectors, countries and complexity of supply chains, operating model, relationship with suppliers and trade unions etc.);

- relevant policies (e.g. process for policy development, policies that concern business relationships, recruitment policy, procurement policy, employee code of conduct, staff training policies);
- relevant due diligence processes (e.g. actions taken to understand the operating context, monitoring, evaluation measures, related due diligence and compliance provisions in supply contracts);
- risk assessment (e.g. inclusion in the organisation's wider approach to risk assessment and management, adoption of policies and procedures that are proportionate to the organisation's size, structure, location of activities and supply chains and nature of business);
- effectiveness in ensuring slavery and human trafficking is not taking place in their business or supply chains (e.g. performance indicators); and
- related training.

There may be overlap with the information in a quoted company's strategic report which sets out information on social, community and human rights issues to the extent required to understand the development, performance or position of the company's business.

The statement requires board approval and must be signed by a director (or equivalent for partnerships).

Is an anti-slavery policy now mandatory?

Although the Act codifies certain slavery and related offences already existing in common law, it does not necessarily require organisations to have an anti-slavery policy. However, organisations should assess whether their policies and procedures are proportionate to their identified business and supply chains risk, the severity of that risk and the level of influence the organisation may have against that risk. In organisations with identified risks, policies (whether stand-alone or incorporated with other compliance policies) and practices supported by senior management and backed-up with communication and training, are recommended. Without such policies in place it will be hard to give a meaningful statement about steps the organisation has taken to ensure that slavery and human trafficking are not taking place.

What are the consequences of non-compliance?

The Secretary of State can seek an injunction to compel an organisation to issue the statement but there is no fine for failing to comply (or statutory offence for approving a false or misleading statement) or for failing to take steps to prevent slavery or human trafficking. The government expects pressure from the public, shareholders and competitors to get organisations to make meaningful statements and improve their conduct.

What now?

Organisations have at least 11 months from now before statements need to be published, but should plan in advance what they would like the substantive content of that statement to be, and any changes to policies and procedure required to enable the board to approve such a statement. Our team can help you assess the application of the rules to your organisation, implement policies and procedures, as well as provide guidance on the contents of the statement. If you would like further information, please get in touch with your usual White & Case contact or with either of the authors.

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