

Modern Slavery Act – Update Note

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Authors: Clare Connellan, Jacquelyn MacLennan, Tallat Hussain, Pavini Emiko Singh, Emily Holland

The UK Modern Slavery Act 2015 (MSA) requires commercial organisations to publish an annual slavery and human trafficking statement for financial years ending on or after 31 March 2016 (with such statements updated annually).

The UK Home Office¹ and civil society are encouraging companies to comply with this reporting requirement, with recent suggestions of a large scale ‘name and shame’ from early 2019.

Who must make an annual statement under the MSA?

All “commercial organisations” that provide goods or services in the UK with an annual global turnover above £36 million are required to make an annual statement. “Commercial organisations” means companies or partnerships, wherever incorporated or formed, carrying on their business, or part of their business, in the UK. Companies domiciled outside the UK will be subject to the rules if any part of their business is carried on in the UK.

The UK Government also encourages organisations with turnovers less than £36 million to produce a statement and be open and transparent about their recruitment practices, policies and procedures in relation to modern slavery and to take proportionate steps. Updated guidance on the reporting obligation was issued by the UK Home Office in October 2017 (Guidance).

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

When does a statement need to be made?

After 31 March 2016, all commercial organisations that meet the threshold must make an annual statement. The Guidance suggests organisations should publish their statements as soon as possible 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.

Where does the statement need to be made?

Organisations must publish the statement on their website 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”. If an organisation does not have a website, anyone can request a copy and the organisation must provide a copy of the statement within 30 days of the request.

¹ UK Home Office Press Release 18 October 2018, *Home Office tells business: open up on modern slavery or face further action*, available at: <https://www.gov.uk/government/news/home-office-tells-business-open-up-on-modern-slavery-or-face-further-action>

The [Modern Slavery Registry](#) (a portal run by a group of NGOs) and [TISCreport.org](#) (an open data register created by an independent UK social enterprise) are currently compiling statements made by commercial organisations.

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 steps have been taken to address slavery and human trafficking. In describing any steps taken, the organisation is not guaranteeing its business and supply chains are slavery free, rather only 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, determined by the sector and jurisdictions in which the organisation and its supply chains operate. The Act and Guidance outline the types of issues that organisations should address, namely:

- organisational structure and business and supply chains;
- relevant policies;
- relevant due diligence processes;
- risk assessment;
- effectiveness in ensuring slavery and human trafficking is not taking place in their business or supply chains; and
- slavery and human trafficking related training and capacity building.

The statement should be transparent and identify risk areas of priority. Where risks are identified, progress should be demonstrated by identifying and reporting against clear goals.

For listed companies, there may be overlap with information in other mandatory sustainability reporting on social, community and human rights issues.

Is an anti-slavery policy now mandatory?

Although the Act codifies certain slavery and related offences already existing at 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 chain risk, the severity of that risk and the level of influence the organisation may have to mitigate against that risk. In organisations with identified risks, policies (whether stand-alone or incorporated with other compliance policies) and practices are recommended, supported by senior management and backed-up with communication and training. Without such policies and practices in place, it may be difficult to give a meaningful statement about steps the organisation has taken to ensure that slavery and human trafficking are not taking place in its operations or supply chain.

What are the consequences of non-compliance?

There is no fine for failing to comply with the requirement to issue a slavery and human trafficking statement, nor is it a statutory offence to approve a false or misleading statement. However, the Secretary of State can seek an injunction to compel an organisation to issue the statement in accordance with the requirements of the Act. If an injunction is granted by the courts, a breach of such injunction is punishable by an unlimited fine. The UK government expects pressure from the public, shareholders and competitors to act so that organisations make meaningful statements and improve their conduct.

What should you do if you have not produced or updated your statement yet?

Commercial organisations meeting the threshold for the MSA will need to consider the substantive content of their statement, and any changes to policies and procedure required to enable the board to approve such a statement. Additionally, companies operating in other countries with legislation in this field, for example, Australia and California, will need to consider their compliance under applicable legislation in those jurisdictions, and may be able to issue a statement addressing requirements in more than one jurisdiction.²

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 the authors of this note or your usual White & Case contact.

White & Case LLP
5 Old Broad Street
London EC2n 1DW
United Kingdom

T +44 20 7532 1000

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² Entities operating in California and Australia may also be subject to reporting requirements under both the California Transparency in Supply Chains Act (companies with an annual worldwide gross receipts exceeding US\$100 million) and the upcoming Australian Modern Slavery Act (companies with an annual turnover exceeding AUS \$100 million) and the New South Wales Modern Slavery Act (companies with an annual turnover exceeding AUS \$50 million). Other jurisdictions are considering similar legislation.