

# Alert

## Modern Slavery Act 2015

### Supply Chain Transparency Statements

#### Summary

On 29 October 2015 Section 54 of the Modern Slavery Act 2015 (“the Act”) came into force, requiring businesses to publish an annual statement specifying the steps taken to ensure that slavery and human trafficking have not been present anywhere in its own business or its supply chain.

This move is intended to improve transparency over what steps businesses are taking to tackle modern slavery in its supply chains and enable investors, consumers, NGOs, and pressure groups to scrutinise the activity of commercial organisations.

The Home Secretary, Theresa May, has published extensive guidance (also on 29 October) on how commercial organisations should approach compliance with this new legal obligation. It is important to underline that the guidance treats large organisations as having the ability to influence global supply chains and states that it is “**not acceptable for any organisation to say, in the twenty-first century, that they did not know**” about slavery, even in complex supply chains. Conducting internal investigations and collaborating with industry groups/NGOs are steps most likely to demonstrate a commitment to the principles in the Act/guidance.

Modern Slavery includes slavery, servitude, forced/compulsory labour and human trafficking. The guidance acknowledges however, that there is likely to be a point at which poor working practices or lack of health and safety awareness amounting exploitation, cross over into Modern Slavery.

#### Who is Affected?

- Commercial organisations (wherever incorporated) which (i) supply goods or services with an annual turnover in excess of £36 million (after deducting trade discounts, VAT and any other turnover taxes) and (ii) carry on any part of its business in the UK.
- Immediate effect for businesses with a year-end on or after 31 March 2016. They will have to publish a statement covering the financial year 2015-16.
- The statement must be published as soon as reasonably practicable after the end of the financial year-end. Reasonably practicable means within six months.

## What are the Action Points?

- Writing/publishing a statement covering the steps the business has taken during the financial year to ensure that slavery is not present in its supply chains.
- The statement is expected to be sufficiently detailed to improve transparency and to enable scrutiny by consumers and public groups. The statement will need to address:
  - The structure of the organisation and its business
  - The nature of its supply chains
  - The policies the organisation has
  - The due diligence processes in relation to slavery / human trafficking in its business and supply chain
  - What risk assessments have been conducted, the outcomes and the steps taken to address the risks identified
  - The effectiveness of procedures to combat slavery by reference to key performance indicators
  - The extent of staff training programmes.
- The Board (or equivalent) must approve the statement and a director (or equivalent) must sign it.
- The statement must be available in a prominent place on any website relevant to the business in the UK or be available on request within 30 days (if the business does not have a website).

## Failure to Comply

- The Secretary of State may obtain an injunction to enforce compliance.
- The guidance makes it clear, however, that NGOs, pressure groups, investors and public opinion will be the main drivers for compliance.

## Key Touch Points

### Carrying on Business in the UK

The Government states that it will take a common sense approach as to the question of whether or not a commercial organisation is pursuing business interests in the UK and therefore carrying on business in the UK. The Courts will be the final arbiter. Despite

the generic nature of this statement some guidance is available, for example:

- A business will need to have a demonstrable presence in the UK in order to be affected by these changes.
- The existence of a subsidiary in the UK will not automatically result in a non-UK parent carrying on business, so long as the UK subsidiary acts independently of the parent or other group companies.
- The primary purpose of the organisation is irrelevant – organisations performing charitable, educational or public functions will be caught if they perform some commercial activity in the UK (i.e. supply goods or services).

### Group Structures/Parent/Subsidiaries

#### Calculating Turnover

The £36 million turnover threshold is met by adding the turnover of the organisation which carries on any part of its business in the UK to the turnover of any of its subsidiary undertakings (even if those subsidiaries operate wholly outside of the UK).

For franchises, the turnover of any franchisee using the franchisers brand will be disregarded in the calculation. Any franchisee turning over £36 million or more will be required to produce a statement. Nonetheless, the guidance suggests that franchisers may wish to consider – on brand impact grounds - producing statements covering the franchise as a whole.

#### Statements for Parents/Subsidiaries

If any organisation in any part of a group structure meets the threshold criteria, then each one will be required to make a statement. However, if the parent company and one or more of its subsidiaries meet the threshold criteria, then the parent may make a single statement that the subsidiaries can use, subject to the qualification that the statement for each subsidiary must adequately set out the steps it has taken during the applicable financial period.

#### Foreign Parents/Subsidiaries

If the parent company's supply chain includes a foreign subsidiary then the parent's statement must include details of the actions of the parent in relation to the

subsidiary. The foreign subsidiary does not need to make a separate statement, although it would represent good practice to do so, especially in high-risk jurisdictions.

Where a foreign parent carries on business in the UK, whether by itself or through a subsidiary, the foreign parent will be required to make a statement.

### Writing the Statement

The guidance makes it clear that the expectation is that the statement will “paint a detailed picture” of the steps taken by the organisation during the financial year to tackle slavery.

There is no prescriptive layout in the guidance, but there are some ‘tips’:

- Use simple easily understood language.

- The statement can be succinct, but must cover all the relevant points including all the steps taken during the year.
- The statement may include links to relevant publications, documents or policies.
- Consider setting out steps taken in each relevant jurisdiction.
- A generic statement will not be compliant; it must reflect the organisation’s sector and the complexity of its structure and supply chains.
- The organisation may draw on other work already done under CSR or Ethical Trade activities or under Chapter 4A of the Companies Act 2006.
- The statement must be true and reflect actual steps taken or begun!

If you have questions concerning the contents of this Alert, or would like more information about The Modern Slavery Act 2015, please speak to your regular contact at Weil, or to:

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