

THE UK MODERN SLAVERY ACT 2015

Introduction

The Modern Slavery Act consolidated previous offences of slavery and trafficking and addresses the role of businesses in preventing modern slavery from occurring in their supply chains and organisations with an annual reporting obligation for qualifying businesses under section 54(9) of the Act. The Home Office has also published statutory guidance on this reporting obligation which was last updated on 4th October 2017.

Eligibility for Reporting Obligation

Under the Act, all commercial organisations:

- with a global turnover of £36 million or more
- that supplies goods or services; and
- carries on any business in the UK;

are required to publish a “slavery and human trafficking statement” on their website for each financial year within 6 months of that year end.

Commercial organisations mean a body corporate or a partnership (including a limited partnership). However there is no definition of carrying on business and a common sense approach will be taken.

The link to the statement must be prominently displayed on the homepage of the relevant website and clearly marked. The Government guidance recommends including a link such as “Modern Slavery Act Transparency Statement”.

For organisations with more than one website, Government guidance recommends that the statement be placed on the most appropriate website

relating to that organisation’s business in the UK, with a copy or link to it on each relevant website to help increase transparency.

Where an organisation does not have a website then a copy of the statement must be provided on request within 30 days of receipt of that request.

Annual Turnover

In calculating the turnover threshold, the turnover of the commercial organisation and any of its subsidiary undertakings (even if operating wholly outside the UK) must be taken into account. Exceptional items such as turnover arising from activities which do not fall within the ordinary activities of the commercial organisation can be excluded.

With regard to franchise systems, Government guidance has clarified that, only the turnover of the franchisor is to be considered when assessing whether the £36 million threshold has been reached, not the turnover of the entire franchise network. However if an individual franchisee’s turnover is more than £36 million, it will have to produce its own slavery and human trafficking statement.

The Act has extra territorial reach as it applies to all businesses that satisfy the turnover threshold that carry on all or any part of its business in the UK regardless of where that business is actually incorporated.

Slavery and human trafficking statement

The annual statement should set out the steps the organisation has taken (even if none) during the financial year to help ensure their supply chains and

all aspects of their business are free from slavery and human trafficking. The aim is to increase transparency for the public, consumers, employees and investors. Where no steps have been taken this should be stated.

Government guidance encourages organisations with turnovers less than £36m to voluntarily produce a transparency statement in order to demonstrate best practice and provide a level of assurance to customers.

Contents of the statement

The Act is not prescriptive as to the layout or content of the slavery and human trafficking statement but Government guidance recommends it is written in simple plain English (although it can be published in other languages if relevant) and where applicable it specifies actions taken within specific countries (where the organisation operates in multiple jurisdictions) to provide context.

The Act includes a non-exhaustive list of information that may be included and Government Guidance wishes to see all of these covered with links to any supporting documents or policies. The 6 key areas to cover are as follows:

1. the organisation's structure, its business and its supply chains;
2. its policies in relation to slavery and human trafficking;
3. its due diligence processes in relation to slavery and human trafficking in its business and supply chains;
4. the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;
5. 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; and
6. the training about slavery and human trafficking available to its staff.

The Government guidance also provides information on the types of activities that could be included under each of the above 6 areas as follows:

- **Nature of the business:** the sectors the business operates in and whether work is

seasonal;

- **Organisation:** details of the organisational structure, group relationships and supply chains, including countries used to source goods, especially high risk countries where modern forms of slavery are prevalent;
- **Organisational policies:** details of the policy making process and all relevant policies in place such as policies concerning business relationships (e.g. a supplier code of conduct), the recruitment policy (e.g. minimum labour standards), employee code of conduct, procurement policies and staff training policies to increase awareness of modern slavery;
- **Whistle blowing:** -details of the organisation's policy to support whistle-blowing;
- **Due diligence:-** details of the due diligence done by the organisation to show commitment to eliminating modern slavery in its supply chains e.g. impact assessments, action plans to minimise risk and audit and evaluation procedures;
- **Assessing and managing risk:** adoption of risk assessment policies and procedures that are proportionate to the organisation's size, structure, location of activities and supply chain(s) and nature of business(es). Key risks to be identified and considered are country risks, sector risks, transaction risks and business partnership risks;
- **Performance indicators:** assessment of key performance indicators used by an organisation and whether they are driving the correct behaviour. These can include imposing compliance standards on suppliers to ensure good working practices or internally by the organisation to improve anti-slavery actions.

If foreign subsidiaries are part of the parent organisations's supply chain or business, the parent's statement should cover any action taken in relation to that subsidiary.

A non-UK subsidiary may also produce its own statement and this is highly recommended in cases where the non-UK subsidiary is in a high risk industry or location.

Franchisees may also wish to publish their franchisor's statement to demonstrate their awareness of the issues.

The Government states that it expects organisations to build on their statements year on year and for the statements to evolve and improve over time. Therefore organisations are encouraged to be as transparent as possible and ensure that historic annual statements are accessible on their websites.

Approval of the statement

The statement must be approved by a director, member or partner of the organisation depending on the type of entity. In each case it should be signed by the appropriate senior person in the business to ensure a senior level of accountability and responsibility for this issue.

What are the risks of non-compliance?

The Act has not introduced any formal penalties for failing to publish an annual Slavery and Trafficking Statement when required to do so by the Act. However a failure to do so, or a statement that an organisation has taken no steps, may damage the reputation of the business, and consumers and investors may apply pressure where they believe a business has not taken sufficient steps.

The Secretary of State (in the UK, the Home Secretary) can separately impose penalties through an injunction requiring the organisation to comply, although it is unlikely to do so without prior warnings.

However the Act has made modern slavery a board issue and a failure to consider this issue seriously or comply with other aspects of the Act can result in serious consequences for those held accountable including disqualification of directors, fines and possible imprisonment.

What should UK businesses be doing now?

Consider the following action points:

- appoint a person responsible for anti-slavery compliance;
- implement an audit of your supply chain;
- introduce robust policies and codes of conduct such as a supplier's code of ethics which suppliers must adhere to together with robust contractual provisions;
- review or revise internal and external performance indicators;

- update employee handbooks and contracts of employment to include effective grievance and whistle-blowing mechanisms;
- train the Board and all those responsible for supply chain management, procurement and HR on risks of non-compliance on the risks;
- ensure the contents of the Slavery and Human Trafficking Statement covers all the key areas in the Government guidance
- consider publishing a voluntary transparency statement even where the level of annual turnover does not meet the requisite threshold under the Act

FIND OUT MORE

For further information about any of the issues raised in this guide, please contact:



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