

MODERN SLAVERY ACT 2015: KEY LEGAL REQUIREMENTS: FAQs

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Background

In November 2014, a clause was introduced into the draft Modern Slavery Bill that would hold certain organisations accountable to report on what they are doing to ensure that slavery and human trafficking are not taking place in any part of the business or its supply chains. This clause has now been enacted.

The Modern Slavery Act (the 'Act') came into force on 26 March 2015. It is designed to address the problem of human trafficking and slavery in the 21st century. Section 54 sets out provisions regarding supply chain transparency. Section 54 came into force on 29 October 2015. The Modern Slavery Act 2015 (Transparency in Supply Chain) Regulations (SI2015/ 1833)¹ were passed in October 2015 setting out the reporting timescales and the turnover threshold. In July 2015 the UK Government introduced a turnover threshold of £36 million. The UK has published Guidance: 'Transparency in Supply Chains etc. A practical guide'. Civil Society has also published a guide: 'Beyond compliance: Effective Reporting under the Modern Slavery Act'.

What is 'modern slavery'?

The Act does not provide a single definition of the term 'modern slavery'. The UK Guidance from the Home Office refers to a number of terms. Generically, modern slavery refers to the exploitation of people or the coercion of people to work against their will. According to the Global Slavery Index there are an estimated 48.5 million people in slavery in the world today.

What does this legislation mean for business?

The transparency in supply chains (TISC) clause could have far reaching implications for suppliers of goods and services. Commercial organisations that are subject to the TISC provision in the Act will have to report annually on the steps they have taken during the financial year to ensure that slavery and human trafficking are not taking place in their businesses or supply chains. Companies who do not fall within the threshold are likely to be asked by companies up the chain about their practices.

What does the TISC clause require?

The regulations require that 'commercial organisations' will have to produce a 'slavery and human trafficking statement' and publish it on their website. In addition, the legislation requires the statement be signed off by those responsible for the business, for example, the board of directors. The TISC clause does not require any positive steps to address the issue of slavery and human trafficking by business. If an organisation publishes a statement conceding that no action has been taken to ensure that slavery and human trafficking is not taking place in its operations or supply chain, then this is legally compliant.

If a business does not have a website it must provide a copy of the statement within 30 days to anyone who makes a written request for one.



When will the reporting requirement start?

Companies with a year end on or after 31 March 2016 will have to publish a slavery and human trafficking statement. The Guidance does however suggest that companies should publish their statement 'as soon as reasonably practicable' and within 6 months of their year end.

What has to be included in the slavery and human trafficking statement?

The legislation does not prescribe what exactly needs to be covered in the statement. Section 54 (5) provides a list of what the statement 'may' include. These are:

1. Information about an organisation's structure, business and supply chains
2. Its policies on slavery and human trafficking in relation to both its business and its supply chain
3. Existing due diligence processes in relation to human trafficking and slavery in its business and supply chain
4. Areas of risk and steps taken to assess and manage those risks where slavery and human trafficking is taking place
5. The effectiveness of policies and steps taken, including key performance indicators
6. Training made available and provided to staff

The Guidance provides information on the types of activities that could be included in each heading under Annex E.

Who must approve the statement?

Where the organisation is a body corporate, the statement must be approved by the board of directors and be signed by a director (or equivalent). If it is a partnership, the slavery and human trafficking statement must be approved by the partners or members and signed by a designated member or general partner.

Where must the statement be published?

Section 54(7) provides that if the organisation has a website it must publish that statement on the website and include a link to the slavery and human trafficking statement in a prominent place on the website's homepage. The Guidance states that the statement should be written in simple language that is easily understood, as it is a public facing document.

Section 54(8) requires that where an organisation does not have a website, it must provide a copy of the statement within 30 days to anyone that makes a written request for one.

Who does the legislation apply to?

The Act applies to commercial organisations:

- that are incorporated or a partnership;
- carrying on all or part of a business in the UK and
- that supply goods or services;
- with a (global) turnover equal to or more than £36 million.



The Act does not restrict the requirements to listed or large companies (i.e. it is not aligned with the thresholds adopted in the Companies Act 2006).

The TISC clause is also not limited by sector or product. This is unlike the California Transparency in the Supply Chains Act 2010 that is limited to retail and manufacturing businesses.

What does the Act not address?

There is no reporting requirement equivalent to the obligation set out in the UK Companies Act 2006 (Strategic and Director's Report) Regulations 2013. As it stands, failure to provide the statement will not lead to personal liability for directors. Unlike the human rights reporting requirement under the Companies Act 2006 (Strategic Report and Director's Report) Regulations 2013, the Act does not include the responsibility of directors to be liable under the governance structure for companies, that can lead to personal liability.

What enforcement action can be taken and what are the consequences of breaching the TISC clause?

The Secretary of State can bring civil proceedings in the High Court for an injunction in England and Wales or specific performance in Scotland.

What should companies be doing?

Most companies caught by the threshold will have had to produce a statement by 31 March 2017. By September 2017 all companies subject to the requirements of the Act will have had to produce a statement. Companies that have not started to think about what their statement will look like will have to gear up for the new obligations. Companies that are larger and those with complex supply chains will want to start considering the requirements of the Act now. However, notwithstanding the size of the company, directors are going to have to decide what their approach will be to compliance – to make no statement, or to start taking steps to identify key supply chain risks. We have produced another guide: '10 steps that companies should take following the introduction of the Modern Slavery Act 2015'.

Key practical questions to ask and address as part of requirements under the Act?

- Does your organisation have a global turnover equal to or more than £36 million?
- Does your organisation have a human rights policy? If so, does it contain a reference to human trafficking, forced labour, and/or slavery?
- Has your organisation taken steps to embed the policies and develop processes?
- Has the organisation in question mapped its supply chain and identified areas of risk?

It is advisable for companies with a lower turnover that don't meet the threshold to consider these issues, nonetheless, particularly when supplying to companies with a turnover equal to or more than £36 million.



About Ardea

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