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## MODERN SLAVERY ACT 2015: KEY LEGAL REQUIREMENTS

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The Modern Slavery Act came into force on March 26, 2015. It is designed to address the problem of human trafficking and slavery in the 21st century. Clause 54 sets out provisions regarding supply chain transparency. Section 54 came into force on 29 October 2015.

## 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. Following a consultation on the TISC clause, in July 2015 the UK Government introduced a turnover threshold of £36 million. The Modern Slavery Act 2015 (Transparency in Supply Chain) Regulations (SI2015/1833)<sup>1</sup> were passed in October 2015 setting out the reporting timescales and the turnover threshold. The relevant commencement order includes a transitional provision stating that the provision does not have effect in respect of a financial year ending before the 31 March 2016<sup>2</sup>. The Government Guidance: Transparency in supply chains: a practical guide (the Guidance)<sup>3</sup> recommends that organisations will have up to six months from the end of their financial year to publish the statement.

## Background

In November 2014, a clause was introduced into the draft Modern Slavery Bill that would hold certain businesses 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.

## 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.

<sup>1</sup> <http://www.legislation.gov.uk/ukdsi/2015/978011138847/regulation/1>

<sup>2</sup> [http://www.legislation.gov.uk/ukdsi/2015/1816/pdfs/ukdsi\\_20151816\\_en.pdf](http://www.legislation.gov.uk/ukdsi/2015/1816/pdfs/ukdsi_20151816_en.pdf)

<sup>3</sup> <https://www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide>

If a business does not have a website it must provide a copy of the statement to anyone who requests one in writing within 30 days.

## 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 rights 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
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.

## 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.

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

## Who does the legislation apply to?

Commercial organisations, carrying on all or part of a business in the UK and that supply goods or services with a turnover equal to or more than £36 million will be subject to the disclosure requirement.

The legislation will apply to commercial organisations operating in the UK. 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 director's in the governance structure for companies.

## 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 or specific performance in Scotland.

## When will the reporting requirement start?

Although the commencement order is 29 October 2015, a transitional provision has been added stating that companies only have to start reporting after March 2016. 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 should companies be doing?

Practically speaking the reporting obligation will only apply to those companies with a year-end on or after the 1st of April 2016. That is not a long time for companies to 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 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?

- Has the organisation in question considered developing a Code of Conduct and particularly a Supplier Code of Conduct? Or does an existing code need to be revised in light of potential developments?
- Does your purchasing policy address trafficking and broader human rights risks?
- What training regarding modern slavery is currently available to managers and employees within the organisation? Will an E-learning module help to train directors, managers and employees on these issues?
- If a statement conceding no action on the issue is published on an annual basis, how would this reflect on the organisation?

It is advisable for companies with a lower turnover that doesn'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 CLT envirolaw:

We are a niche sustainability and business and human rights consultancy harnessing our legal expertise. We aim to provide high quality, specialist advice and resources to organisations seeking to create strategic or operational change in line with their business objectives. We have experience in developing bespoke human rights policies, training and due diligence procedures, with a particular passion for combatting the issue of human trafficking. Our clients range from small companies to FTSE 100 companies. Most are in the UK but we have also worked for businesses across Europe, the Middle East, and South Africa.

If you have any questions or for further information on the legislation please contact our Director, Colleen Theron ([colleen.theron@clt-envirolaw.com](mailto:colleen.theron@clt-envirolaw.com))

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