

The UK's Modern Slavery Act: the website requirements

Website statement required from certain organisations

A new provision contained in the Modern Slavery Act 2015 ('MSA'), which came into force on 29 October 2015, requires certain commercial organisations to publish on their website a statement detailing any steps they have taken to ensure slavery and human trafficking is not taking place in their supply chains or in their business. The first organisations that will be required to produce a statement will be those that have a year-end on or after 31 March 2016¹.

Application

Section 54 of the MSA applies to any commercial organisation that: (i) supplies goods or services; (ii) carries on a business, or part of a business, in the UK; and (iii) has an annual turnover above £36 million². Guidance produced by the Government stipulates that the turnover figure is to be calculated by reference to the turnover of the organisation and its subsidiaries (including those operating wholly outside the UK).

Each parent and subsidiary (whether UK-based or not) to which section 54 applies must produce a statement. If both the parent and subsidiary are required to publish a statement, the subsidiary can use the statement produced by the parent provided that it fully covers the steps each organisation has taken. According to the Government guidance, the parent should not ignore the actions of its non-UK subsidiaries as that could impact on its reputation.

Requirement

A qualifying organisation must publish on its website a statement (and include a link to it in a prominent place on the homepage) each financial year detailing the steps it has taken to ensure slavery and human trafficking is not taking place in any of its supply chains or in its business, or confirming that no such steps have been taken. If the organisation has no website, it must provide the statement within 30 days to anyone who makes a written request.

The MSA provides that the statement may, but need not, include information on the organisation's: structure, business, and supply chain; policies on slavery and human trafficking; due diligence processes in relation to slavery and human trafficking; assessment and management of the risk of slavery and human trafficking taking place; effectiveness in ensuring that slavery and human trafficking is not taking place, measured against appropriate performance indicators; and relevant staff training.

According to the guidance, an organisation is at liberty to choose the layout and structure of its statement, but should use simple language, and cover all the relevant points succinctly³.

The statement must be approved by the board of directors (or equivalent management body) of an organisation, and signed by a director (or equivalent). In the case of a limited liability partnership, it must be approved by the members, and signed

by a designated member.

If an organisation fails to comply with the requirement, section 54(11) entitles the Secretary of State to bring civil proceedings for an injunction to compel it to comply.

Comment

Organisations should consider whether they or any entities in their group are likely to be subject to the new provision. In deciding whether an organisation is 'carrying on a business or part of a business in the UK,' the government anticipates that "applying a common sense approach will mean that organisations that do not have a demonstrable business presence in the [UK] will not be caught by the provision. Likewise, having a UK subsidiary will not, in itself, mean that a parent company is carrying on a business in the UK, since a subsidiary may act completely independently of its parent or other group companies."⁴ This wording mirrors that used in the Government guidance accompanying the UK Bribery Act 2010.

The new provision does not oblige organisations to put in place anti-slavery compliance programmes; a business can in fact be in compliance with section 54 by simply stating that it has taken no steps during the financial year in respect of slavery and human trafficking. The Government's expectation, however, is that organisations will not wish to publish a statement declaring such inactivity. It also expects that the section 54 statements will become a factor for investors, consumers and the general public to consider when deciding with whom they should (or should not) do business.

Organisations will need to take the time to assess the adequacy of any measures that may well already be in place within the organisation to combat slavery and human trafficking - for example, screening procedures for new employees, due diligence procedures for third party engagement, wider risk assessments, or relevant policies and codes of conduct. Organisations should also take into account any similar transparency reporting that may already be taking place in respect of its obligations in other jurisdictions.

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1. Modern Slavery Act 2015 (Commencement No. 3 and Transitional Provision) Regulations 2015 (SI 2015/1816).
2. Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015 (SI 2015/1833).
3. Home Office, Transparency in Supply Chains etc.: A practical guide, para. 4.2 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471996/Transparency_in_Supply_Chains_etc__A_practical_guide_final_.pdf
4. Ibid., at para. 3.6.