

UK Modern Slavery Act: Initial Reporting Deadline Expires

September 19, 2016

Employment

In 2015, the UK government introduced a requirement for certain companies to make annual statements on action taken to eradicate slavery and human trafficking from their businesses and suppliers. The publication deadlines for the first organisations caught by the rules expire in September and recent statements issued by businesses across a variety of sectors provide some interesting clues as to evolving market practice.

Overview

Under section 54 of the Modern Slavery Act 2015 (the “Act”), all businesses meeting the turnover threshold (see below) must publish a “slavery and human trafficking statement” each financial year describing steps taken during the previous year to ensure that slavery and human trafficking is not occurring in the business—including its supply chain; or, if no such steps have been taken, stating that fact. The statement must be approved by the board of the relevant entity, signed by a director or partner, and published on the organisation’s website. The first organisations required to publish are those with a financial year end of March 31, 2016. While the Act itself merely requires companies to publish “as soon as reasonably practicable,” UK government guidance (which can be accessed [here](#)) suggests that companies should aim to publish within six months of the financial year end.

A Reminder of the Requirements

Who Is Caught?

A private member’s bill currently before the House of Lords may, if passed, result in the UK government publishing a list of companies within scope. For now, businesses must self-assess. A commercial organisation is caught if it:

- has a global turnover of over £36 million (calculated as net global turnover derived from the provision of goods and services falling within the ordinary activity of the organisation or its subsidiaries/affiliates after deduction of trade discounts, value added tax, and other taxes); and
- is “carrying on business” in the UK (applying a common-sense approach).

Government guidance makes clear that all group companies meeting the revenue threshold are required to produce a statement. However, subsidiaries may use the parent’s statement as long as the statement covers the steps each organisation has taken in the relevant year.

What Should the Statement Include?

As set out in our earlier client alert (which can be accessed [here](#)), the Act lists potential issues to be addressed in statements. Guidance suggests a number of actions that businesses might consider taking, largely focused on proper auditing, appointing persons to take responsibility for managing compliance, due diligence, and training.

Consequences of Non-compliance

Legal sanctions are limited to a possible injunction to compel publication. There are no fines for non-compliance, unless non-compliance is in contempt of a court order to publish (see our earlier client alert on the subject, linked above). Currently, the main compliance driver is, of course, reputational

Benchmarking

Over 600 companies, the majority of which are headquartered in either the UK or the U.S., have now published slavery and human trafficking statements. The Business and Human Rights Resource Centre maintains a public registry of statements made pursuant to the Act (which can be accessed [here](#)). While the legal requirements themselves do not obligate businesses to produce extensive statements or reports, current market practice strongly suggests that businesses across a variety of industries—including manufacturing, energy, technology, pharmaceutical, utilities, food and drug, consumer products, and professional services—are doing more than is strictly necessary to comply with the regulations.

Unsurprisingly, few (if any) statements indicate that *no* steps have been taken, though such a statement would satisfy the Act's requirements. Companies in labour-intensive sectors have tended to produce the most robust statements. However, professional services firms have generally also opted to publish fairly detailed statements, often committing to the development of policies and processes for risk assessment, internal auditing, and workforce training in the 2016 - 2017 financial year.

The 2015 - 2016 statements include the following initiatives:

- Conducting internal audits and risk assessments of the organisation's supply chains—including those providing both physical and intellectual services to the business—focusing on countries, industry sectors, and/or business partnership risks;
- Updating procurement policies and procedures to include verifying suppliers' compliance programmes and highlighting existing systems in place—such as whistleblowing procedures—geared towards identifying non-compliant practice in the supply chain;
- Establishing internal training programmes to ensure there is a good understanding, particularly amongst employees in procurement roles, of possible risk areas for modern slavery and human trafficking in the business' global supply chain; and
- Carrying out on-site audits of high-risk suppliers and piloting anonymous smartphone app surveys for employees lower down the supply chain to report on labour practices.

Clearly, the Act is causing a significant increase in the level of scrutiny of supply chains among larger businesses. That outcome was no doubt intended as a response to growing pressure from civil society and consumers for businesses to be more transparent about their global operations. The UK government hopes that organisations will build and report on measures

Employment

being taken to eradicate slavery and human trafficking year on year. It will be interesting, in coming years, to track commitments made in initial statements to develop a more complete picture of underlying risk, and of sectoral market practices adopted to manage that risk.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Employment practice:

<u>Christopher Walter</u>	+44 20 7067 2061	cwalter@cov.com
<u>Christopher Bracebridge</u>	+44 20 7067 2063	cbracebridge@cov.com
<u>Hannah Edmonds</u>	+44 20 7067 2181	hedmonds@cov.com

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

Covington & Burling LLP, an international law firm, provides corporate, litigation and regulatory expertise to enable clients to achieve their goals. This communication is intended to bring relevant developments to our clients and other interested colleagues. Please send an email to unsubscribe@cov.com if you do not wish to receive future emails or electronic alerts.