

UK Modern Slavery Act: New Obligation to Issue an Annual Compliance Statement

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A new provision in the Modern Slavery Act 2015 (the “Act”), due to come into force in October 2015, will require large commercial organisations carrying on business in the UK to prepare an annual statement detailing any action they have taken to ensure slavery and human trafficking is not taking place in their supply chains or in their business.

Impact

- Section 54 of the Act (“the new provision”) will apply to any commercial organisation, wherever incorporated or formed, 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 million. The government set the £36 million turnover threshold (approximately USD \$55 million) following consultation with businesses and stakeholders earlier in 2015.
- A commercial organisation must prepare and publish on its website a statement each financial year of the company 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 commercial organisation does not have a website, it must provide the statement within 30 days to anyone who makes a written request.
- The Act provides that the statement must be approved by the board, signed by a director, and may, but need not, include information on the commercial organisation’s:
 - (i) structure, business and supply chain;
 - (ii) policies on slavery and human trafficking;
 - (iii) due diligence processes in relation to slavery and human trafficking;
 - (iv) assessment and management of the risk of slavery and human trafficking taking place in its business and supply chains;
 - (v) effectiveness in ensuring that slavery and human trafficking is not taking place in the business or supply chains, measured against appropriate performance indicators; and
 - (vi) relevant staff training.
- If a commercial 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.

Timing

- The UK government has confirmed that “*transitional provisions will be developed so that statements are not required where a businesses’ [sic] financial year end is within*

close proximity to the date that the duty comes into force." These provisions are yet to be issued.

- The Secretary of State is empowered to issue guidance in relation to the new provision, and the government has indicated its intention to issue such guidance concurrently with the implementation date of the new provision.

Comment

- The new provision applies to more companies and sectors than equivalent requirements currently imposed in other jurisdictions. The California Transparency in Supply Chains Act, for example, covers only specific business sectors and only the supply chains for goods, and applies to companies with an annual turnover above \$100 million that meet a set level of activity in the state of California. The new provision by contrast covers all commercial organisations with an annual turnover above £36 million that carry on any part of their business in the UK, covers all business sectors, and both goods and services.
- Businesses should consider whether they or any entities in their group are likely to be subject to the new provision. The Act uses the same broad jurisdictional language as the Bribery Act 2010. The effect is that if a company registered or formed outside the UK, can be said to be carrying on at least part of its business in the UK, it will need to comply with the requirement. Businesses will also need to make an assessment of which "supply chains" will form the basis of any report.
- Businesses should also take steps to understand the efforts that may well have already taken place within the organisation to combat slavery and human trafficking, for example, as part of the business's screening procedures for new employees, its due diligence procedures for engagement of third parties, its wider risk assessments, or its policies and codes of conduct, and to prepare for any further steps that it may identify as being necessary.
- The new provision does not require businesses to put in place anti-slavery compliance programmes. The government has noted that *"it is possible for a business to comply with the provision in the Act by simply stating that they have taken no steps during the financial year to ensure that their business and supply chains are modern slavery free."* The government expects, however, that few companies will wish to make such a statement year after year, and that the new provision will increase transparency surrounding what action businesses are taking (or not taking), allowing investors, consumers and the general public to decide who they should do business with.

If you have any questions concerning the material discussed in this update, please contact the following members of our firm:

Robert Amaee	+44 20 7067 2139	ramae@cov.com
Christopher Bracebridge	+44 20 7067 2063	cbracebridge@cov.com
Hilary Prescott	+44 20 7067 2008	hprescott@cov.com
Christopher Walter	+44 20 7067 2061	cwalter@cov.com

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