



Friday 30 October 2015

## Corporate Transparency and the Modern Slavery Act 2015

Under new rules, which have just come into force, large organisations operating within the United Kingdom will now need to make a public statement outlining how they keep their supply chains free from slavery and human trafficking.

This new corporate reporting obligation is brought in by s.54 of the Modern Slavery Act 2015 (the "Act") and the recent implementing regulations.

The Act demonstrates the UK Government's clear intention to keep the spotlight on corporate behaviour both at home and abroad. This legislative trend of forcing corporates to be more open about their business activities is central to what some refer to as "new wave" regulation. Our [earlier article](#) for the BVCA comments further on this concept.

Following yesterday's release of the Government's long awaited [guidance](#), this briefing considers how the new supply chain transparency obligation is likely to affect you and what steps you should be taking.

### Who is caught by the new transparency rules?

An entity will fall within the supply chain transparency provisions of the Act if it:

1. is a commercial organisation;
2. supplies goods or services;
3. carries on a business or part of a business in any part of the United Kingdom; and
4. has a total annual turnover of not less than £36 million.

### What is a "commercial organisation"?

The Act defines a "commercial organisation" as a body corporate or partnership (wherever incorporated or formed) which carries on a business, or part of a business, in any part of the United Kingdom. For this purpose, "business" includes a trade or profession. The commercial organisation must supply goods or services.

### How much of the business needs to be undertaken in the UK?

There is no minimum amount. The Government has suggested that it is sufficient that any part of a business is taking place in any part of the United Kingdom. Organisations which carry out only a small part of its business within the United

Kingdom may still be affected by the Act. In determining whether or not the organisation "carries on a business" in the UK, guidance suggests that it will be determined by a common sense approach, considering whether or not there is a demonstrable business presence in the United Kingdom.

## The turnover threshold

Any commercial organisation (as defined above) with a total annual turnover of not less than £36 million will need to comply with the Act.

The total turnover of a commercial organisation is the turnover of that organisation and the turnover of any of its subsidiary undertakings. This will include subsidiaries incorporated outside of the United Kingdom. Therefore, the turnover threshold refers to global turnover and not just turnover in the United Kingdom. "Subsidiary undertaking" has the meaning given by s.1162 Companies Act 2006.

Turnover is calculated by "the amount of revenue derived from all sources, after deduction of trade discounts, value added tax and any other taxes." This is the same calculation as per s.474(1) Companies Act 2006.

The thresholds correspond to the Companies Act 2006 threshold for determining the size of a large company. Therefore, companies that qualify as small or medium under the Companies Act 2006 will not have to prepare a statement.

## What must qualifying organisations do?

Any commercial organisation falling within the Act must prepare a slavery and human trafficking statement ("Statement") at the end of each financial year.

The Statement should set out the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains and/or in any part of its own business. Alternatively, the Statement could simply state that the organisation has taken no such steps. This second option is unlikely to be a realistic compliance route given the potential for reputational damage.

As the guidance makes clear, the organisation does not need to guarantee that its entire supply chain is slavery free, but rather, it must set out the actions it has taken to ensure that no slavery is taking place in its supply chains.

## Content of the Statement

An organisation's Statement may include information about:

- the organisation's structure, its business and its supply chains;
- its policies in relation to slavery and human trafficking (namely the "core" offences under the Act – see below);
- its due diligence processes in relation to slavery and human trafficking in its business and supply chains;
- the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;
- its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate; and
- the training about slavery and human trafficking available to its staff.

These requirements are non-mandatory and are offered as guidance only. The Government has stated that they "fully expect slavery and human trafficking statements to differ from business to business".

The Government's [guidance](#), although not comprehensive, at least provides some additional direction on how to prepare these Statements.

## Approving and publishing the Statement

The Statement must be approved in the correct way. For companies, it must be approved by the board of directors and signed by a director.

The Statement must be published. If the organisation has a website, it must post the Statement on that website and include a link to it in a prominent place on that website's homepage.

If the organisation 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.

## **Do subsidiaries also have to produce a Statement?**

A subsidiary will only be required to produce its own Statement if it falls within the above four tests in its own right (i.e. the subsidiary is a commercial organisation, supplying goods or services, carrying on business in the UK, and it exceeds the turnover threshold of £36 million).

Where a parent company and a subsidiary company are both required to produce a Statement, one Statement may be produced as long as it covers the full business and the supply chain of the parent and the subsidiary and is placed on both the parent's and the subsidiary's websites.

## **Which supply chains?**

If a parent company qualifies, it will only need to report on its own supply chains, not necessarily the supply chains of all group companies. However, the guidance makes clear that if the activities of a (foreign or UK) subsidiary form part of the supply chain of the parent, then the parent's Statement will also need to report on the supply chains of the subsidiary. This will be the case even if the subsidiary does not need to make its own Statement.

It is likely that the reporting obligations will apply to upstream supply chains only; however, there is significant uncertainty surrounding issues such as how far up the supply chain organisations are expected to investigate. Unhelpfully, the guidance suggests that "supply chain" should be given its everyday meaning.

Where organisations are dealing with the manufacture, import or supply of 'goods' the relevant supply chains should be fairly obvious; however, with organisations that supply 'services', it may be far from clear.

## **Core offences**

In addition to the above corporate obligation to provide a Statement, the Act restates and introduces a number of "core" offences. These cover:

- slavery, servitude, forced or compulsory labour and
- human trafficking.

The subject matter of these "core" offences form the focus of investigations which are to be carried out as part of the corporate Statement.

## **Next steps**

This reporting obligation came into force on 29 October 2015.

However, further to transitional provisions, commercial organisations with a financial year that ends before 31 March 2016 do not have to make a Statement in respect of that financial year. Note, however, that subsidiaries (such as portfolio companies) which qualify in their own right may have different financial year ends from their parents and may have to start preparing a Statement in early 2016.

Going forward, failing to make a Statement when required can lead to enforcement via an injunction, and continued breach could result in fines.

The main impact on organisations that fail to comply (or whose statements are weak or misleading) will, however, be reputational (be it with investors or customers or by becoming the target of NGOs).

To ensure organisations are able to comply, the following questions should be considered now:

- Whether or not the requirement to report will apply to your organisation (either directly and/or to any of your subsidiaries)?
- If so, whether you are likely to make a positive or negative Statement?
- What information you already have regarding existing supply chains?

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- What further due diligence is necessary to gather the relevant information for the Statement?
- Are your procedures, for example corporate policies and staff training, adequate?

We are currently working with a number of organisations on the above steps and would be pleased to assist with any enquiries you may have on this new corporate obligation.

Travers Smith has a dedicated Operational Risk team with experience advising on mandatory and voluntary corporate reporting regimes at both UK and EU level.

Please contact Doug Bryden or another member of the Travers Smith team if you have any legal enquiries relating to the issues raised in this briefing.

## FOR FURTHER INFORMATION, PLEASE CONTACT

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