

The Modern Slavery Act 2015: Next Steps for Businesses

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Under the Modern Slavery Act 2015, organisations conducting business in the United Kingdom with worldwide revenues of at least £36 million are required to publish a transparency statement describing the steps they have taken in the last financial year to ensure their business and supply chains are free from modern slavery and human trafficking¹. The obligation applies to financial years ending on or after 31 March 2016, and transparency statements should be published as soon as reasonably practicable after, and ideally within six months of, the financial year end.

While organisations are not required to take substantive measures to combat modern slavery, legislators have expressed the hope that businesses will use the reporting obligation as an impetus to introduce measures that do so, both because it is “the right thing to do²” and in a “race to the top³” motivated by competitive pressure⁴. A non-profit organisation has created a [register](#) of published transparency statements to enable consumers, investors and campaigners to monitor and compare the measures taken by different businesses. Accordingly, a failure to report positive action to combat modern slavery and show progress achieved over time could have adverse reputational consequences. Conversely, demonstrating adherence to best practices may well improve investor and consumer relationships and strengthen relationships with employees and suppliers.

This memorandum considers how domestic and cross-border company groups are affected by the new legislation, sets out some of the more technical aspects of the reporting obligation and provides practical advice on the substantive measures that affected businesses can take.

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¹ The concepts of slavery (including requiring a person to perform forced or compulsory labour) and human trafficking are wide ranging, and broadly intuitive. We refer to these behaviours collectively throughout this memorandum as “modern slavery”.

² See [statutory guidance](#), para 1.4.

³ Statutory guidance, para 2.5.

⁴ See Hansard, 4 November 2014: “Once it is clear what activity major businesses are undertaking, we expect that public pressure and competition between businesses will encourage those who have not taken decisive steps to do so.”

1. Issues for domestic and cross-border groups

Determining whether a cross-border business conducts business in the United Kingdom may not be straightforward. The government recommends that where an organisation is incorporated outside of the United Kingdom, a common-sense approach should be adopted⁵, but organisations should have at least a demonstrable business presence in the United Kingdom to be caught by the legislation⁶:

- *UK subsidiaries*: Having a UK subsidiary will not, by itself, mean that a non-UK parent is conducting business in the United Kingdom. However, a non-UK parent might be considered to conduct business in the United Kingdom through a UK subsidiary if management decisions for the UK subsidiary are taken exclusively or predominantly by that parent, if revenues are automatically remitted to the parent, or if the parent's staff are routinely seconded to the UK subsidiary. Even if a non-UK parent determines that it does not conduct business in the United Kingdom through the UK subsidiary, if the UK subsidiary itself meets the revenue test, that UK subsidiary will be required to make a transparency statement. The non-UK parent should therefore consider the reputational impact of a subsidiary making a transparency statement that does not cover the entire group. Furthermore, the non-UK parent (and other overseas affiliates) will need to consider to what extent they would be indirectly caught by the UK subsidiary's transparency statement if the non-UK parent or other overseas affiliate does intra-group business with that UK subsidiary.
- *UK branches*: Companies should be alert to the fact that UK registered branches do not have a separate legal identity from their "parents". As such, a company (meeting the revenue test) which operates in the United Kingdom through a branch will itself be required to produce a transparency statement by virtue of it carrying on a business in the United Kingdom through that branch.

⁵ Statutory guidance, para 3.7.

⁶ Statutory guidance, para 3.8.

- *Other UK connections*: Other factors that businesses should take into account include the magnitude of revenues (and profits) generated in or from the United Kingdom, the extent of real estate held or offices operated or other assets held in the United Kingdom, and trading relationships or clients in the United Kingdom.
- *Non-UK subsidiaries of in-scope parents*: While it may be technically possible to disregard the activities of non-UK group members that do not form part of any in-scope entity's supply structure, we would expect reporting obligations to be applied on a group-wide basis, not least to mitigate the reputational risk of being seen to ignore unsound practices in parts of a global organisation⁷.
- *Multiple in-scope group members*: Where more than one company in a group is required to produce a transparency statement, the parent may produce one statement that its subsidiaries can use to discharge their own obligations, provided that the statement fully covers the steps that each relevant entity has taken in the relevant financial year.⁸ A single transparency statement on a group-wide basis expressly made on behalf of all the in-scope group members ought to be acceptable in such a case.

Key questions:

- Is your organisation a body corporate or partnership that supplies goods and services and conducts business in the United Kingdom, either in its own right, through a UK subsidiary or branch or because of other business connections?
- Does the organisation have group-wide worldwide revenues of at least £36 million or more in a particular financial year?

⁷ This expectation is echoed by statutory and non-statutory guidance, including [the guidance issued by CORE](#), the UK corporate accountability group.

⁸ Statutory guidance, para 3.4.

- If the answer to both of these questions is “yes”, it must prepare a transparency statement for that financial year.

2. What do you need to do?

Content

The transparency statement must include details of any steps taken during the relevant financial year to ensure that modern slavery is not taking place in any part of the organisation’s business or supply chains, (or, alternatively, a statement that the organisation has taken no such steps)⁹.

Outside of the general requirement that all relevant measures be included, the precise content of the transparency statement is not prescribed. The statute does, however, suggest that the following may be included¹⁰:

- details of an organisation’s structure, business and its supply chains (this could include information on the main products and services offered, a group’s structure and subsidiaries, the location of operations and key suppliers, and any seasonality in the sector in which the organisation operates);
- an organisation’s policies in relation to modern slavery (which might include procurement policies or supplier codes of conduct);
- an organisation’s due diligence processes in relation to modern slavery¹¹;
- an assessment of the parts of an organisation’s business and supply chains where there is a risk that modern slavery may be taking place, and the steps it has taken to assess and manage that risk (including any impact assessments or audits

⁹ Modern Slavery Act 2015 (the “Act”), s. 54(4).

¹⁰ The Act, s. 54(5); see also CORE guidance pages 21-23.

¹¹ With reference to the [UN Guiding Principles Reporting Framework](#) (the “[UNGP Reporting Framework](#)”), [guidance](#) issued by the Law Society notes that organisations are encouraged to provide additional detail on any engagement that an organisation has had with relevant stakeholders in connection with its business and supply chain diligence (see Law Society guidance, section 3.1.3).

carried out and monitoring and evaluation measures in place);

- an organisation’s effectiveness in ensuring that modern slavery is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate (this might include disclosure of any instances of modern slavery identified, corrective action taken and the publication of any performance indicators used); and
- the training about modern slavery provided to staff.

Additionally, where modern slavery issues are identified, businesses may wish to address the following¹²:

- the procedures that it followed to address such issues;
- the business functions that have overall responsibility and accountability for addressing such issues; and
- the resources (including budget) that were allocated to the management of such issues.

Statutory guidance suggests that the content and level of detail should be determined by each organisation on the basis of its risk profile (including its sector, the complexity of its structure and supply chains, and the sectors and regions in which its suppliers operate)¹³.

Format

There is no prescribed format. Any information included should be presented in simple language¹⁴, and the transparency statement can be succinct and contain links to relevant documentation rather than set policies or procedures out in full¹⁵. The Law Society has published a [template statement](#) that may be used as a starting point.

Approval

The transparency statement must be approved by the board of directors and signed by a director (or, in

¹² See the UNGP Reporting Framework.

¹³ Statutory guidance, para 4.2, see section 4 for more detail on risk factors.

¹⁴ Statutory guidance, para 4.1.

¹⁵ *Ibid.*

relation to other types of entities, in accordance with equivalent prescribed procedures)¹⁶.

Publicity

The approved transparency statement must be published on the organisation's website, with a link to the statement placed in a prominent place on the homepage¹⁷. For organisations with multiple websites, a copy of or link to the transparency statement should be placed on the most appropriate site linked to the organisation's UK activities¹⁸.

Deadline

There is no specific deadline under the legislation for publishing a transparency statement, but statutory guidance suggests that it should be published as soon as reasonably practicable after the end of the relevant financial year, and in any case within six months of that date¹⁹.

Enforcement

The legislation envisions that the Secretary of State will enforce the obligation to publish a transparency statement through injunctive relief^{20, 21}.

Key practical points to consider:

- There is no prescribed format or content for the transparency statement, save that it must set out all steps taken to combat modern slavery in the organisation's business and supply chains in the relevant year.
- The legislative provisions suggest topics that might be addressed, which should be tailored to the organisation's specific circumstances.

¹⁶ The Act, s. 54(6).

¹⁷ The Act, s. 54(7); note that organisations with no website must make a copy of the transparency statement available on written request.

¹⁸ Statutory guidance, para 8.2.

¹⁹ Statutory guidance, para 6.4.

²⁰ The Act, s. 54(11) – note that failure to comply with such an injunction will place an organisation in contempt of a court order, punishable by an unlimited fine (see statutory guidance, para 2.6).

²¹ Note, by contrast, that penalties for the commission of the primary offences that make up modern slavery include imprisonment (for individuals, including company directors and officers), or fines (for incorporated and unincorporated bodies), see the Act 2015 at s. 5.

- The transparency statement must be approved and signed in the prescribed manner and should be published on the organisation's website as soon as reasonably practicable following the end of the relevant financial year.

3. Preparation for the first transparency statement

Although the new reporting obligation does not require organisations to take active measures to eliminate modern slavery from their business and supply chains, but merely to disclose what (if any) steps they have taken or to state that they have taken no such steps, it would be prudent to introduce measures to address any areas of risk pro-emptively²².

As organisations can tailor any measures to their risk profile, the first step is for an organisation to map its operations and supply chain to the extent possible and conduct a risk assessment.

The following factors may indicate increased risk:

- complex and/or multi-national supply chains, which may be difficult to diligence or monitor;
- operations in high-risk regions, including regions where there is an absence of government regulation or enforcement of labour standards, and/or reliance on low-skilled, unskilled or cheap labour;
- operations in high-risk sectors, including highly seasonal sectors, or sectors involving dangerous or physically demanding work; and/or
- the use of outsourced or sub-contracted labour (such as agency workers) and/or an absence of effective workers' representation.

Depending on the organisation's risk profile and the sectors or geographical regions in which it operates, a risk assessment may include engagement and consultation with affected stakeholders, including

²² The following section is intended to give a flavour of what measures might be taken and is not intended to give an exhaustive overview. For more information, see statutory guidance at Annex E and CORE guidance (see footnote 7).

persons directly affected by an organisation's activities and experts in relation to modern slavery issues or particular industries or regions.

An organisation should then conduct an assessment of the measures already in place to prevent modern slavery and their effectiveness in addressing any enhanced risk identified.

Policies and Training. Most organisations will already have in place some policies that touch on issues connected with modern slavery, including whistleblowing and procurement policies.

- All relevant policies should be reviewed and updated with more precise or detailed language about modern slavery.
- Organisations may wish to implement a standalone anti-slavery and human trafficking policy, comprising a clear policy statement of the organisation's approach to combatting modern slavery, what is expected of employees in this respect and how responsibility for monitoring compliance with the policy is allocated.
- Non-compliance with any relevant policy should carry consequences under the organisation's disciplinary policies and procedures.

Appropriate training on any new or updated policies should be provided to employees.

- It may be appropriate to provide enhanced training to managers and employees operating in high-risk areas (for example procurement), ensuring they are equipped to recognise and react to instances of modern slavery.
- Induction procedures for new recruits should be modified as necessary.

Supplier relationships. To maximise their effectiveness, supplier procedures to combat modern slavery should come into operation at the engagement stage. Organisations should review any relevant procurement procedures to address the risk of modern slavery in new suppliers' businesses or supply chains. Measures around procurement might include:

- requiring new suppliers to complete due diligence questionnaires. The information

requested might include (i) details of the supplier's suppliers, sub-contractors or agencies used and confirmation that appropriate due diligence has been carried out by the supplier in respect of them; (ii) confirmation that the supplier operates in compliance with any applicable supplier code of conduct; (iii) details of the supplier's average worker remuneration; and (iv) details of the jurisdictions in which the supplier (and its suppliers and sub-contractors) operate;

- introducing a risk rating system on the basis of the organisation's general risk assessment and/or the diligence questionnaire results. Enhanced diligence measures might be implemented where suppliers are classified as high risk, and simplified procurement protocols put in place for low-risk engagements; and/or
- implementing an approved/blacklisted supplier system.

Whenever new or updated contracts with suppliers are being negotiated, organisations could seek to include specific prohibitions and obligations relating to modern slavery and any applicable policies or supplier codes of conduct, together with clearly defined consequences in case of a breach. Such specific clauses may include tailored compliance with laws obligations, warranties as to the accuracy of due diligence information provided, record keeping requirements, notification requirements in case incidences of modern slavery are identified and performance indicators tailored to monitor the supplier's efforts to combat modern slavery.

Additionally, the identification of modern slavery in a production process (and, presumably, in the provision of a service) could be treated as a quality control issue whereby the relevant product or service is deemed defective²³.

To complement any contractual protections, organisations may consider engaging with existing key suppliers to develop a supplier code of conduct (or upgrade any existing document), which sets out an organisation's expectations with regard to preventing modern slavery in its supply chain. The supplier code could communicate a zero-tolerance

²³ See CORE guidance.

approach to modern slavery, describe behaviours constituting modern slavery and be tailored to reflect the environment in which the organisation's suppliers operate.

To assist in managing the risk of modern slavery in the businesses of indirect suppliers, such a code could include an obligation on direct suppliers to take measures to ensure that their own supply chains are free from modern slavery.

Existing suppliers should be made aware of any updated policies or supplier codes, and training on new procedures may be appropriate for key suppliers.

An organisation's approach to existing suppliers should be sensitive to any specific risks identified in the initial risk assessment. Businesses might consider auditing suppliers identified as high risk.

Key practical points to consider:

- While not required under the legislation, it may be in organisations' interest to review and enhance measures taken to combat modern slavery within their businesses and supply chains.
- As a first step, organisations should conduct a comprehensive risk assessment to identify deficiencies.
- Measures might include updating or implementing relevant policies and training and amending procurement procedures.

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