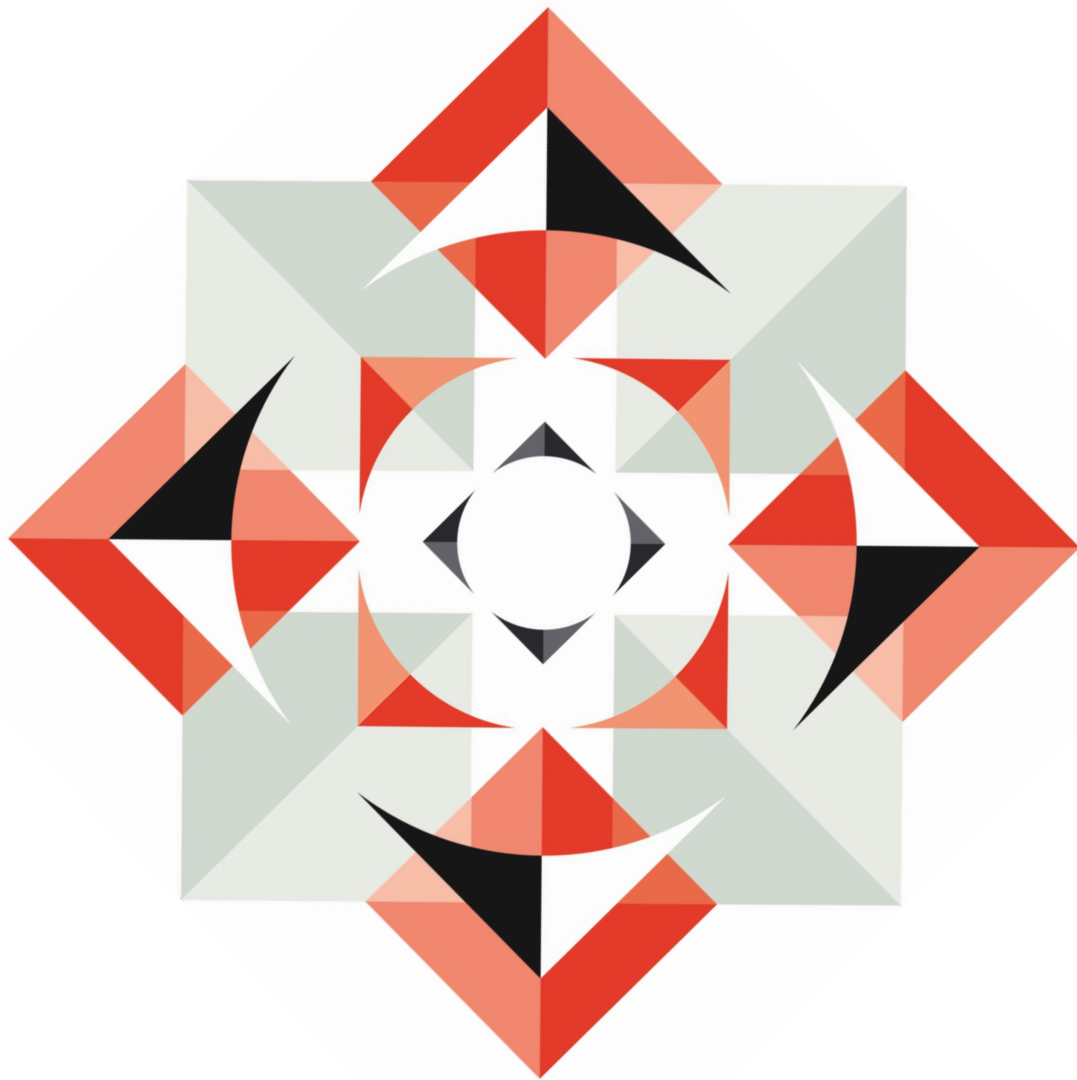


Modern slavery - transparency in supply chains



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Introduction

Although many organisations take steps to promote ethical business practices and have policies to protect workers from being exploited, the Government considers that there is a significant way to go to tackle so-called “modern slavery”. It has therefore introduced an obligation on large organisations to publish an annual statement setting out the steps they have taken to prevent modern slavery in their organisation and their supply chains.

This Inbrief looks at these requirements and the steps organisations need to take to comply.

The Modern Slavery Act 2015

According to estimates by the International Labour Organization, 40.3 million people around the world are in a form of slavery, including 24.9 million in modern slavery and 15.4 million in forced marriage. One in four victims of modern slavery are children.

This is not merely of academic interest in the UK. The globalisation of the economy means that goods and services bought here may have a long and tangled supply chain encompassing multiple countries, including countries where bonded or forced labour is common. Modern slavery exists in the UK too and can involve UK citizens, as well as foreign nationals.

The Government’s view is that tackling modern slavery not only protects vulnerable workers but can also bring a number of business benefits:

- > protecting and enhancing an organisation’s reputation and brand
- > protecting and growing its customer base
- > improved investor confidence
- > greater staff retention and loyalty
- > developing more responsive, stable and innovative supply chains.

Under the Modern Slavery Act 2015 (“MSA”), the term “modern slavery” is used to cover both offences in the MSA: slavery, servitude and forced or compulsory labour; and human trafficking.

The MSA addresses the issue of modern slavery in a number of ways, including consolidating existing offences for slavery and human trafficking and establishing an Independent Anti-Slavery Commissioner. But for employers the pertinent requirement is section 54, which requires large businesses to publish an annual slavery and human trafficking statement.

The slavery and human trafficking statement

The statement must set out the steps the organisation has taken to ensure slavery and human trafficking is not taking place in its supply chain or its own business (or it must state that it has not taken any steps). The statement

must be approved by senior management and published on the organisation’s website.

The Government has published Guidance on transparency in supply chains (Transparency in Supply Chains — A Practical Guide) which is designed to provide practical assistance for organisations to comply with their obligations.

Although there is no definition of “supply chain” in the MSA, the Guidance states that the term “has its everyday meaning”. Given the spirit of the legislation and the Guidance, it is likely that it would be interpreted in a broad way, potentially including supply chains which are remote from the core business.

For instance, the Guidance gives an example of a prominent retailer’s “good practice” approach to ethical trading. This includes, amongst other anti-slavery measures, the retailer ensuring the conditions in factories which produce their goods are free from modern slavery (for example, employment is freely given, there is no child labour and no inhumane treatment occurs). In addition, the retailer undertakes numerous audits of the suppliers that produce the component parts of the goods which it sells, such as fabric mills, dye houses, sundries and packaging factories to ensure ethical standards throughout the supply chain.

The Government hopes that businesses will develop an “appropriate and effective response” to modern slavery and will take “further action” over and above the requirement to produce a statement.

Who must publish a statement?

Under section 54, “commercial organisations” (meaning companies and partnerships, wherever formed or incorporated) must publish a statement if they supply goods or services and have an annual turnover over a minimum threshold – currently set at £36 million. The organisation must be carrying on all or part of its business in the UK to be caught, but the relevant turnover is global turnover, and includes the turnover of any subsidiaries as well as the organisation itself. Even if an organisation pursues primarily charitable or educational aims or purely public functions, provided it engages in commercial activities and meets the minimum threshold, it will have to produce a statement.



If any organisation in any part of a group structure meets these requirements, it is legally required to produce a statement.

Where a parent and one or more subsidiaries in the same group are required to produce a statement, the parent may produce one statement that subsidiaries can use to meet this requirement (provided the statement fully covers the steps that each of the entities have taken in the financial year in question).

While businesses will only have to publish a statement for each financial year in which their turnover exceeds £36million, the Government strongly recommends that organisations who have produced statements in one financial year continue to produce statements in subsequent years, even when they are not required to do so by law (for example, if their turnover falls below the minimum threshold). Its view is that organisations will be able to build on statements year on year and show the public, consumers and investors that they are being transparent and embracing the spirit of the anti-slavery legislation.

Even if the legislation does not apply to an organisation, the Guidance encourages all businesses to be open and transparent about their recruitment practices, policies and procedures in relation to modern slavery by producing a statement voluntarily. Smaller organisations may find this necessary in order to manage requests from those they are supplying goods and services to, particularly if they are bidding for contracts with large businesses with a turnover of more than £36million.

When must the statements be published?

Although there is no prescribed time limit in which to make the statement, the Guidance states that organisations should publish their statements as soon as possible after their financial year end to which the statement relates and that it expects this to be, at most, six months from the organisation's financial year end.

What information should be in the statement?

The statement must include the steps the organisation has taken during the financial year

to ensure that slavery and human trafficking are not taking place in any of its supply chains or in any part of its own business. Alternatively, an organisation could state that no such steps have been taken (although, particularly for high profile, public-facing organisations, this is unlikely to be very attractive even if legally compliant).

Beyond this, the MSA does not stipulate in detail what a statement must include or how it should be structured. The Guidance states that a statement can use material from other reports or policies if this is relevant and link to these documents. The statement should be written in simple language, be easily accessible to everyone and provided in English as well as other languages which are relevant to the business and supply chains in question.

The MSA provides a non-exhaustive list of information which organisations may want to include in the statement:

- > the organisation's structure, its business and supply chains
- > its organisational policies in relation to slavery and human trafficking
- > due diligence
- > assessing and managing risk
- > performance indicators
- > training.

While the MSA does not stipulate a required form or length in respect to this information, the Guidance states that the statement should aim to include the above information and that organisations should paint a detailed picture of the steps it has taken to address and remedy modern slavery and the effectiveness of all such steps.

Approval and publication of the statement

The Guidance stresses the importance of an organisation's top management in taking the lead in fostering a culture where modern slavery is not tolerated in any form.

The statement must be signed off by a senior person. Who this is depends on the type of

organisation. If the organisation is a company, the statement must be approved by the board of directors and signed by a director. If it is a limited liability partnership, the statement must be approved by the members and signed by a designated member. For other types of partnership, it must be signed by a partner. It is best practice for the statement to include the date on which the board or members approved the statement.

The statement must be published on the organisation's website, if it has one, and there must be a prominent link to it from the homepage. The Guidance suggests that a link with the title "Modern Slavery Act Transparency Statement" should be used so the content is clear to the reader.

The Guidance recommends that organisations which have more than one website should put the statement on the most appropriate website relating to the organisation's business in the UK. If there is more than one relevant website, organisations should put a copy of the statement or link to the statement on each website. If an organisation does not have a website, it must send a copy of the statement to anyone requesting it within 30 days.

Given the emphasis on building on progress year on year, the Guidance suggests that organisations should look to keep historic statements from previous years available online when new statements are published to enable the public to compare statements between year and monitor progress of the organisation over time.

Failure to publish a statement

There are limited enforcement provisions for organisations which fail to comply with section 54 of the MSA. If an organisation fails to publish a statement, the Secretary of State can get an injunction to enforce it, but the real motivator is likely to be the risk of reputational damage.

In theory, an organisation could simply publish a "no steps taken" statement. While this would comply with the law, the public relations fallout could be significant. Campaigners and NGOs are likely to "name and shame" any culprits and it is possible that so-called "ethical investment" funds would not invest in such organisations.

The Government's intent is that consumers, investors and NGOs will engage and apply pressure where they believe businesses have not taken appropriate steps.

Businesses in some sectors may need to put considerable time and resources into identifying and taking steps to investigate and prevent slavery in their supply chain and producing a statement which does not put them at risk of stakeholder disapproval, critical media attention and activist campaigning. This applies particularly to those with complex supply chains which operate in high risk-sectors, such as agriculture, fishing, food production, clothing and consumer goods manufacture and mining.

Next steps

Organisations to which the obligation to provide a statement applies should consider:

- > Who is responsible? A team from different business areas may be needed.
- > What action is the organisation taking already in relation to modern slavery? For example, there may already be a modern slavery policy, corporate social responsibility initiatives, or corporate disclosure about human rights issues. Identify any gaps.
- > What risk assessments of the business and its supply chains are needed to determine which areas are most at risk of slavery and human trafficking?
- > Who are the relevant suppliers and what are they doing to ensure there is no slavery or trafficking in their business (or their suppliers' businesses)?
- > Whether contractual terms with suppliers contain provisions drafted with a view to ensuring there is no slavery in the supply chain? Do the terms deal with the issue explicitly? Is there sufficient control over subcontracting to ensure the organisation knows who subcontractors are and that they are not involved in slavery or human trafficking?

- > Whether the organisation conducts business with suppliers in a way that might create higher risk (e.g. putting severe downward pressure on prices or delivery times which encourages them to subcontract to other suppliers)?
- > Whether and how they want to monitor suppliers, particularly if they operate in another country (e.g. self-reporting, auditing and/or spot checks)? What is appropriate will depend upon the risks.
- > What training should be offered and to whom (e.g. procurement managers, supply-chain managers, the board of directors).
- > What should be included in the slavery and human trafficking statement and how it should be implemented. Consider which parts of the business may need to input into it or review it (e.g. senior management, business functions, HR, Marketing/PR).

Even if the legislation does not apply to an organisation, consideration should be given to voluntarily producing a statement and taking steps to demonstrate openness and transparency in tackling modern slavery.

Future developments

The Modern Slavery (Transparency in Supply Chains) Bill 2017-2019 ("Bill") is currently making its way through Parliament and will amend the MSA to:

- > require public bodies to produce an annual statement (alongside commercial organisations)
- > require commercial organisations and public bodies to include a statement in their annual reports and accounts and require public contracting authorities to exclude economic operators who have not provided a statement from procurement procedures
- > require the Secretary of State to publish a list of all commercial organisations that are required to publish a statement

- > require organisations which state that no steps have been taken to set out the reasons why this is so
- > make mandatory the list of information which organisations must include in the statement.

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