



Governance *in brief* Modern Slavery Act 2015

Headlines

- The Modern Slavery Act was published on 26 March 2015.
- All organisations with UK operations and turnover in excess of £36 million, with a year end on or after 31 March 2016 are required to publish a slavery and human trafficking statement on their website as soon as reasonably practicable after the year end.
- This statement must set out the steps that an organisation has taken during the financial year to ensure that no slavery or human trafficking is taking place within the organisation or its supply chains, including all third party suppliers and subcontractors.
- The extreme case of modern slavery is not the only area of labour exploitation that is coming under increased focus by BIS and by governments around the world.

Background

The Modern Slavery Act 2015 (“the Act”) was published in March 2015, in response to heightened concern around slavery, human trafficking and forced labour in global supply chains and recognises the role that companies can play in tackling these crimes.

Deloitte has been involved with the Act since before its publication, including working with the Home Office and US State Department to bring together leaders from government, the private sector and NGOs to share ideas on tackling modern slavery. We consider the Act an important step to raise awareness of modern slavery and labour exploitation and believe that all reputable organisations should embrace its requirements.

What is modern slavery?

Modern slavery is a broad term for the criminal activity for certain aspects of the abuse of human rights. It includes the offences of slavery, servitude and forced or compulsory labour, as well as human trafficking.

Slavery: The key element of slavery is the deprivation of freedom and behaviour on the part of the offender as if they own the victim.

Servitude: Forcing an individual to provide services through the use of coercion. This includes the obligation for the victim to live on another person’s property and being unable to change this condition.

Forced or Compulsory Labour: Work or service is obtained from an individual under the menace of any penalty. They have not offered this work or service voluntarily.

Human Trafficking: The offender arranges or facilitates the travel of the victim with a view to that person being exploited – this can be even where the victim consents to the travel, as they may have been deceived or unduly influenced.

In 2015, the International Labour Organisation (ILO), an agency of the United Nations, estimated that 21 million people are victims of forced labour around the world, generating approximately US\$150 billion a year in illicit profits. The Modern Slavery Act provisions are designed to encourage businesses to tackle modern slavery head on.

The Act is meant to raise the bar and send a message to the rest of the world that the UK is determined to confront all forms of human trafficking and slavery both at home and abroad, with the aim of reducing the number of individuals being exploited at the hands of others, as well as increasing penalties for those found guilty.

The Department for Business Innovation and Skills has also released a consultation “**Tackling Exploitation in the Labour Market**” which draws attention to less serious offences of exploitation not captured by the Modern Slavery Act. To go beyond mere compliance with the Act, companies could also review supply chains to ensure there is no exploitation of workers, for example being forced to endure sub-standard accommodation, excessive hours, recruitment fees, or illegally low wages.

The reporting requirement

Contained within the Act is a provision, Section 54 (Transparency in Supply Chains), that requires relevant companies (see below) to prepare and publish a slavery and human trafficking statement for each financial year.

The Act does not specify the content and structure of the statement, the only strict requirements are that it must:

- detail all the steps taken during the financial year to ensure that slavery and human trafficking are not taking place in any of the company’s supply chains or any part of the business (or make a negative statement that the organisation has taken no such steps);
- be approved by the board of directors and signed by a director (or equivalent); and
- be published on the organisation’s website and include a link to the slavery and human trafficking statement in a prominent place on that website’s homepage (and within 30 days to provide a copy of the slavery and human trafficking statement to anyone who makes a written request for one).

It is up to individual companies to determine the content and level of detail to disclose. The Act does, however, suggest six areas of content which may be included:

- a) the organisation’s structure, its business and its supply chains;
- b) its policies in relation to slavery and human trafficking;
- c) its due diligence processes in relation to slavery and human trafficking in its business and supply chains;
- d) 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;
- e) 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
- f) the training about slavery and human trafficking available to its staff.

More detailed guidance is available in Annex E of the government’s guidance document **Transparency in Supply Chains etc: A practical guide**.

It is important to note that by making the statement the organisation is not required to guarantee that the entire supply chain and organisation is slavery free, the organisation is just required to detail all the steps it has taken to ensure that no slavery or trafficking is taking place.

Who will be affected?

The requirement to make a slavery and human trafficking statement applies to all commercial organisations supplying goods or services, in any sector, with a total turnover exceeding £36 million, conducting business anywhere in the UK.

However limited their UK operations and regardless of their country of incorporation, any groups which exceed this threshold will be required to report under these new regulations if they carry out business in the UK. In the cases of groups, the requirement to make a statement applies separately to each parent and subsidiary that carries out business in the UK. However, companies within the same group are permitted to produce a single statement that sets out the steps that each company has taken.

This £36 million total turnover threshold is the same threshold contained within the Companies Act 2006 for the purposes of determining of what constitutes a “large” company (though considerations such as balance sheet size and number of employees will not apply). In determining “total turnover”, organisations must include the turnover of that organisation, as well as that of any subsidiary undertakings.

In respect of whether an organisation can be deemed to “carry on business in the UK”, the government has stated that a “common sense” approach should be applied, considering the following:

- any incorporated organisation or partnership is captured under the provision, irrespective of the purpose for which profits are made (i.e. whether it has primarily commercial, charitable, educational, or public functions);
- having a UK subsidiary does not necessarily mean that a group parent will be caught by the provision, if the subsidiary’s operations in the UK are independent of the parent and other group companies (e.g. they do not acquire goods or services from those companies); and
- organisations without a “demonstrable business presence” in the UK will not be caught by the provision.

Timing

This new reporting requirement applies to those relevant companies with a financial year ending on or after 31 March 2016. The statement must cover the full financial year of the organisation.

Although there is no set date by which a business must publish its statement, there is an expectation that they will do so as soon as reasonably practicable after the relevant financial year end. In the majority of cases, this would happen alongside any other annual or non-financial reports. The Government encourages organisations to report within six months of the organisation’s financial year end.

Key areas for consideration

Organisations should already be considering supply chain risks within their business – the Act aims to focus attention on considering the whole chain, from end-to-end, to ensure it is slavery free.

Companies making the positive statement regarding the steps that they have taken to ensure no modern slavery is taking place would be expected to undertake at least some due diligence prior to reporting. Any organisations making a statement that no such steps have been taken will need to be prepared to explain the reasons why they came to the view that no steps were necessary.

Areas to consider include:

- Adding the requirements to the board’s compliance register or risk register to ensure appropriate central oversight.
- Critically examine existing supply chains end-to-end to identify potential risk areas of human trafficking and slavery (e.g. “hot” countries or industries).
- Identify and address any other potential risk areas within the business, with a focus on sub-contractors or any unregulated workforce.
- Review internal policies and procedures for procuring new suppliers or commencing any new business.
- Review existing supplier and contractor contracts to ensure they are in line with relevant internal policies and procedures.
- Review internal training and HR procedures in respect of modern slavery to ensure that all staff have had appropriate training and are aware of company policies and that there is an effective whistleblowing policy if modern slavery is found.
- Develop procedures for review and approval of the statement prior to publication to ensure that risks are appropriately mitigated, credible information is examined and informed decisions are made.
- Consider whether to take a broader approach to labour and human rights beyond what is prescribed by the Act, e.g. adopting the UN Guiding Principles on Business and Human Rights.
- Consider how reporting will show progress in this area year on year – this is designed to be an iterative process whereby companies demonstrate their ongoing commitment.

Failure to comply

Companies who fail to comply with these new regulations face the risk of an injunction through the High Court which would require the organisation to comply or risk being held in contempt of court – which carries the risk of an unlimited fine.

Further to this, any non-compliance or negative/no steps statement runs the real risk of significant commercial and reputational damage.

For further information

The Modern Slavery Act 2015 and the Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015 can be found at <http://www.legislation.gov.uk>.

“Transparency in Supply Chains etc. A practical guide” can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471996/Transparency_in_Supply_Chains_etc__A_practical_guide__final_.pdf

“The freedom ecosystem: How the power of partnership can help stop modern slavery” is available at deloitte.com/1UebFp6

Deloitte View

We believe that the Modern Slavery Act provides the chance for businesses to demonstrate their commitment to ensuring the proper treatment of and respect for people throughout their organisation and supply chains.

We agree that it is important for businesses to be transparent and accountable in this area, and consider this an area which could cause considerable reputational damage if not addressed.

Although the risk resides in the supply chain, it will require central oversight given its nature and the reputational risk, including potentially from internal audit, and therefore we consider it should be added to the board’s compliance or risk register so that the board receives appropriate regular updates.

Contacts and feedback:

Supply chain

Deloitte’s supply chain team provides end to end supply chain advisory and implementation services, from procurement through manufacturing to distribution, systems implementation, and compliance advisory and assurance. Deloitte also has a proprietary self-assessment tool and accompanying maturity matrix relating to the Act and transparency in supply chains. To speak to a practitioner about using this tool, please contact James Yearsley, head of our Supply Chain practice.

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Sustainability and modern slavery

Deloitte’s sustainability and modern slavery assurance and advisory team provides assistance to clients on modern slavery, including policy and strategy development, risk assessment and supplier engagement, through to disclosure, advisory and assurance services.

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The Deloitte Academy

The Deloitte Academy provides support and guidance to boards, committees and individual directors, principally of the FTSE 350, through a series of briefings and bespoke training. Membership of the Deloitte Academy is free to board directors of listed companies, and includes access to the Deloitte Academy business centre between Covent Garden and the City.

Members receive copies of our regular publications on Corporate Governance and a newsletter. There is also a dedicated members’ website www.deloitteacademy.co.uk which members can use to register for briefings and access additional relevant resources.

For further details about the Deloitte Academy, including membership enquiries, please email enquiries@deloitteacademy.co.uk.

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