

## Modern Slavery Act 2015: compliance and reporting

March 2016

Section 54 of the Modern Slavery Act requires companies to produce a slavery and human-trafficking statement for each financial year ending on or after 31 March 2016

### Transparency and non-financial reporting

The Modern Slavery Act 2015 (the “Act”) has brought into effect a new requirement for certain large organisations with UK operations to disclose what steps they have taken to ensure slavery and human trafficking are not taking place in their businesses and supply chains. The Act does not just apply to UK companies and will also affect companies incorporated overseas as long as they carry on business and supply goods or services in the UK.

More detail about the application and content of the Transparency Statement is set out in guidance published by the Home Office on 29 October 2015: *Transparency in Supply Chains etc., A Practical Guide* (the “Guidance”).

The Guidance sets out that the Transparency Statement should be published as soon as possible and within six months of each financial year end.

This briefing discusses who will be affected and how to deal with the requirement for preparation of a Transparency Statement under section 54 of the Act, as well as the implications of the Modern Slavery Act for organisations generally.

### Who must produce a statement?

- **Commercial organisations**

This includes all organisations which engage in commercial activities and the purpose of profits does not matter - it can include large charities, public bodies and educational institutions

- **Corporate bodies or partnerships**

This includes limited partnerships and similar firms overseas

- **Carrying on business in the UK and supplying goods or services**

The Guidance suggests organisations need a “demonstrable business presence” in the UK and that a common sense approach should be taken

Organisations which have only a UK subsidiary and no other UK operations may not be caught if the subsidiary’s operations are independent of the parent

- **Turnover not less than £36 million**

This means aggregate turnover, including that of any subsidiary undertakings

## Preparing a Transparency Statement

Companies have some discretion over the general lay-out and precise content of the Transparency Statement. The Act itself contains minimal mandatory requirements and a longer list of optional inclusions (set out in the box opposite). Recent guidance compiled on behalf of the CORE Coalition, comprised of a number of voluntary organisations, recommends that companies should cover all of the optional areas listed in section 54 of the Act. Organisations can comply with the Act's requirements simply by making a declaration that no steps have been taken to deal with slavery and human trafficking. However, this would clearly cause reputational issues for the company concerned.

The Business and Human Rights Resource Centre has compiled an online registry of statements produced to date and companies' compliance with the requirements of the Act is expected to be scrutinised by the press and voluntary sector organisations.

We recommend that organisations should focus on procedure rather than outcome and be careful not to guarantee that supply chains are free of slavery and human trafficking. All information included in statements should be verified to ensure it is sufficiently accurate to withstand scrutiny.

Recently filed statements have varied greatly from business to business depending on the nature of the organisations' operations and supply chains. However, companies have generally taken the opportunity to highlight within the Transparency Statement any pro-active steps which have already been taken under an existing corporate social responsibility program.

## Contents of a Transparency Statement

**Title:** Modern Slavery Act Transparency Statement

**Required details:** 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 and in any part of its own business

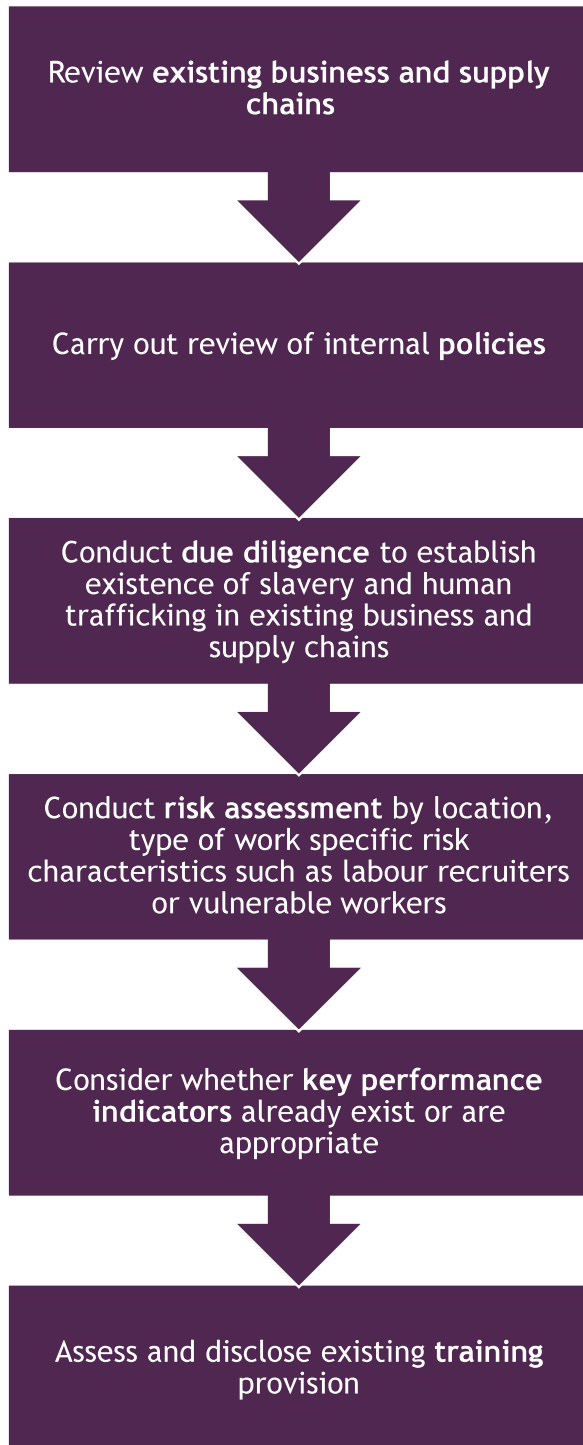
OR

a statement that the organisation has taken no such steps

**Optional details:**

- the organisation's structure, business and supply chains
- policies in relation to slavery and human trafficking
- due diligence processes in relation to slavery and human trafficking in the organisation's business and supply chains
- assessment of the risk across the organisation's business and supply chains and steps taken to manage that risk
- effectiveness in ensuring that slavery and human trafficking is not taking place measured against such performance indicators as the organisation considers appropriate and
- training about slavery and human trafficking available to staff

**Steps to take when preparing a Transparency Statement**



**Compliance team**

Organisations should designate an individual or team responsible for gathering information and directing, compliance with the Act and related policies on an on-going basis.

**Review existing business and supply chains**

The term “supply chains” is not defined in the Act: the Guidance states it has its everyday meaning. Supply chains are not limited to core suppliers and will include ancillary suppliers such as cleaning and catering functions. Companies may initially focus on first tier suppliers but should also seek to engage with lower tier suppliers, where there is less transparency and greater risk of issues arising.

There is no obligation to include subsidiaries which operate independently. However, the Guidance encourages parent companies to cover non-UK subsidiaries on a voluntary basis.

**Internal policies**

Companies may wish to put in place a specific anti-slavery or human rights policy, but in addition should gather information about existing policies which may be relevant, including policies relating to procurement and supply, recruitment, whistle-blowing and grievance procedures.

Companies should make provision for what would happen in the event slavery or human trafficking is uncovered. The Guidance makes clear that any specific instances of slavery or human trafficking which are identified in the UK should be reported to the police immediately. If issues are identified overseas, the best response may be less clear. Guidelines issued by the Organisation for Economic Co-operation and Development suggest organisations may, in some circumstances, continue a supply relationship whilst attempting

to rectify matters or may temporarily suspend relations. They suggest only using disengagement as a last resort if it may worsen conditions for the individuals affected.

### Due diligence and risk assessment

OECD Guidelines advise that where enterprises have large numbers of suppliers they should identify general areas where risk is most significant. Based on this risk assessment, enterprises should prioritise suppliers for due diligence.

Companies can engage with industry representative bodies and associations to identify parts of supply chains and operations which are high-risk. Operational areas of higher risk include use of third-party recruitment agents and low-paid, unskilled labour. Companies can also look at reports of NGO bodies, such as the United Nations Office on Drugs and Crime Global Report on Trafficking in Persons 2014, which can help to identify geographical areas which are high-risk.

It will be more difficult for organisations to assess suppliers who are further along the supply chain and over whom the organisation's control may be limited. Organisations can engage with suppliers and supply agreements can regulate the actions of sub-suppliers, which we consider in more detail below under “Other Implications”.

If any slavery or human trafficking is uncovered by due diligence, companies need to consider carefully how to deal with the issues arising and how to cover the issues in the Transparency Statement, taking into account the risk of litigation.

### Approval of the Transparency Statement

The Act requires the Transparency Statement to be approved by the Board and signed by a Director. Equivalent requirements apply to other types of organisations.

The Transparency Statement should be published on the company's website with a link to the statement from a prominent place on the company's homepage.

A signed version of the Transparency Statement should be uploaded onto the company's website. Some companies have recently received press criticism for uploading only the text of the statement rather than the signed version.

### Other implications

Companies should consider implications of the Act in other areas such as:

- **acquisitions:** companies should look at compliance with the requirements of the Modern Slavery Act in due diligence and include appropriate warranty protections in any purchase agreement. Note that there are no particular legal penalties for failure to report, save for the ability of the Secretary of State to apply for an injunction requiring compliance. The Transparency Statement itself may highlight issues within a target's supply chains;
- **supplier contracts:** companies can include information rights, warranties and undertakings for compliance with the Act and with the company's anti-slavery policy within supply agreements. Contractual provisions may:
  - cover compliance by sub-suppliers as well as the immediate supplier. Requirements relating to subcontractors could be extended to cover other kinds of supplier;
  - specify that the supplier will ensure its arrangements with its own suppliers include audit rights and obligations to respond to due diligence queries raised by the company;

- require that sub-suppliers must pass on equivalent contractual requirements to their own suppliers.
- **new supplier due diligence:** this should cover Modern Slavery Act compliance. Supplier checks should also be updated to address risk factors relevant to slavery and human trafficking;
- **loan agreements:** the Loan Market Association has not included a specific undertaking or representation for compliance with the Modern Slavery Act within its standard form facility agreements. However, compliance may be assessed by some lenders in the credit due diligence process;
- **insurance:** check that existing insurance adequately covers any risks identified.

### Annual reporting requirements

Companies do not have to include information from the Transparency Statement within their annual reports but can do so on a voluntary basis.

For companies which are required to produce a Strategic Report, the Transparency Statement may have some overlap with any social, community and human rights disclosures to the extent it gives an understanding of the development, performance or position of the company's business.

The new reporting requirement for large listed companies under the EU Non-Financial Reporting Directive will require companies to report on human rights policies and due diligence, risk management and performance measurement and will require similar disclosures to those contained in the Transparency Statement. This is expected to apply in the UK for financial years commencing on or after 1 January 2017.

### Suggested wording for inclusion in annual report

The Board has approved a Modern Slavery Act Transparency Statement in compliance with section 54 of the Modern Slavery Act 2015, which is available to view on the Company's website here: [insert link].

### Future developments

The Modern Slavery Act forms part of a legislative landscape of transparency and disclosure, including anti-money laundering and bribery laws, which bolsters governmental efforts to deal with cross-border issues falling outside the reach of legislative efforts at national and EU level. This trend is set to continue over the coming reporting period, with requirements to disclose control of corporations entering into force on 6 April 2016 and the Department for Business, Innovation and Skills and the European Commission consulting on the EU Non-Financial Reporting Directive mentioned earlier.

Companies with a financial year-end falling on or after 31 March 2016 will need to start the process of gathering and auditing information about existing supply chains, risks, policies and procedures in order to be ready to put in place a Transparency Statement within good time after the end of the financial year. Companies need to be careful that any statement published is accurate, but should not rush to put in place hastily thought-out policies. Companies are expected to build on their statements year-on-year, so that statements created over subsequent financial years create a picture of progress.

For further information on the matters highlighted in this briefing, please contact Rebecca Cousin or your usual Slaughter and May contact:



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