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Modern Slavery Act 2015: Transparency in supply chains

What is the Modern Slavery Act?

Modern slavery has a broad definition, covering not only slavery, servitude and forced compulsory labour; but also human trafficking. The Modern Slavery Act 2015 has been introduced to consolidate the law on modern slavery, ensure effective punishment of perpetrators and to improve support for victims.

Modern Slavery. Facts and Figures



- It is estimated that there are 20 to 30 million people worldwide in modern slavery or forced labour conditions.
- Human Trafficking is the fastest growing criminal industry in the world, second only to drugs.
- S.54 is modelled on Californian Transparency in Supply Chains Act 2010.

How does this affect businesses and employers?

Section 54 of the Act is groundbreaking by introducing a new obligation on businesses of a certain size to improve the transparency of modern slavery by publishing a modern slavery and human trafficking statement. The statement must set out the steps it has taken to eradicate modern slavery and human trafficking from its business and its supply chains (option A statement). Alternatively an organisation can publish a statement that no such steps have been taken (option B statement).

Do the new transparency requirements apply to your business?

The requirement to produce an anti-slavery and human trafficking statement is triggered for commercial organisations that supply goods and services and have an annual turnover of £36 million or more. A 'commercial organisation' is a corporate or partnership which carries on a business or part of a business in the UK. The government estimates as many as 12,259 companies active in the UK are within the scope of section 54. The Act is also unusual by attempting to have a global reach. No UK footprint is necessary provided that the organisation meets the qualifying criteria. This is the case even if the organisation pursues charitable or educational purposes or operates purely in the public sector.

Turnover is calculated as the turnover of that commercial organisation and the turnover of any of its subsidiary undertakings (including those operating wholly outside the UK). 'Turnover' means the amount derived from the provision of goods and services falling within the ordinary activities of the commercial organisation or subsidiary undertaking, after deduction of trade discounts, value added tax and any other taxes based on the amount so derived.

Section 54 has a broad impact. Organisations that fall below the turnover threshold may still be impacted if they form part of the supply chain of an organisation which does meet the criteria. They are likely to find that questions on their approach to issues of modern slavery form part of bid/tender processes, and/or that they are required to accept contractual terms imposed by clients concerning their approach to modern slavery.



The Modern Slavery and Human Trafficking Statement

Section 54 creates a legal obligation to produce a statement each financial year which sets out:

'the steps the organisation has taken during the financial year to ensure that slavery and human trafficking has not taken place –

- (1) In any of its supply chains
- (2) In any part of its own business'

The statement is only the tip of the iceberg. The process steps which underpin the statement will involve a significant amount of work.

The content of the statement will vary between organisations. The statement may include information regarding:

Organisation's business model and supply chains;

Anti-slavery and human trafficking policies and training;

Slavery and human trafficking due diligence undertaken for business and supply chains;

Identifying risk areas in supply chain and steps taken to manage risk;

Performance indicators to demonstrate organisation's effectiveness at tackling slavery and human trafficking in business and supply chain.

When does the obligation to publish a statement take effect?

This will depend on a commercial organisation's financial year end. Transitional provisions have been introduced for relevant organisations with a financial year end of 30 March 2016 or before.

If your company's financial year end is between 29 October 2015 and 30 March 2016, then no statement is required for the current financial year.

Any year end on or after 31 March 2016 will trigger the requirement for a full Option A or B statement in respect of that financial year. Organisations are encouraged to report within six months of their financial year end.

Approving the statement

The statement must be approved and signed by a director, member or partner depending on the type of organisation. The logic behind this is to ensure senior engagement. An organisation's top management will be best placed to foster a culture in which modern slavery and human trafficking are not tolerated within an organisation, its business and supply chains.

Publishing the statement

Section 54 requires the statement to be published on an organisation's website with a link to it in a prominent page on its homepage. The aim is to allow the statement to be easily accessible to whoever wishes to see it. If an organisation does not have a website then it must provide a copy of the statement, where one has been produced and is available, within 30 days of receiving a request for it.

Enforcement

Although there is scope for the Secretary of State to enforce compliance through an injunction, or in Scotland civil proceedings for specific performance of a statutory duty, the government acknowledges that the real threat lies in public pressure and reputational damage.

Who within an organisation should take responsibility for tackling modern slavery?

Whilst the government intends that top management within an organisation drives its efforts to tackle modern slavery, day-to-day steps are likely to involve cross-departmental co-ordination from procurement, HR, legal, CSR and compliance teams.

How can we help?

For any organisation the first issue is to establish whether it is caught by section 54 of the Act. Organisations that meet the criteria will then be faced with scoping their response, including preparation and publication of their modern slavery and human trafficking statement. Our employment law team can support you every step of the way.

Every organisation's response to the transparency requirements is likely to be different depending on its ethos, the nature of its business, its global reach and the character and extent of its supply chain.

Key steps of an organisation's project are likely to include:



Map business and supply chains

Establish a clear policy framework with overall relevant principles. This may be done through establishing a Code of Conduct which will drive an organisation's response to issues of modern slavery and human trafficking.

Undertake a risk assessment and identify features of business/supply chain vulnerable to issues of modern slavery and identify priorities.

Define roles and responsibilities

Evaluate existing processes

Assess what policies already exist on this issue. Most large organisations will have ethical trading policies and supplier codes of conduct

Due diligence

Carry out appropriate due diligence on existing and new suppliers and develop risk rating tools

Ensure that you have appropriate auditing mechanisms in place

Introduce an action plan for corrective measures and remediation

Ensure that there are sufficient ways in which issues can be escalated

Update policies

Establish or re-write ethical trading and other supplier policies

Ensure that individuals and those working with suppliers are able to raise concerns through whistleblowing or grievance policies and ensure disciplinary policies link in with any breaches in standards of conduct

Supplier management and engagement

Adapt commercial contract templates with anti-slavery and human trafficking clauses and statements, ensuring compliance with local laws

Suppliers must understand the organisation's approach to modern slavery and what their obligations are with their own suppliers

Consider if agreements should contain clauses regarding corrective action and remediation

Identify and respond to commercial hurdles to amending existing agreements with suppliers

Engage and train staff

Deliver targeted training, particularly for those involved in procurement

Train employees on how to identify the signs of modern slavery and forced compulsory labour and human trafficking

Prepare and publish statement

Ensure that there is appropriate sign off for the statement

The statement should be updated annually

Review and report on activities

Develop continuous improvement cycle

Learn from others and talk to peers and industry bodies

Contact us



Sarah Ozanne

Partner

T +44 20 7367 2650

E sarah.ozanne@cms-cmck.com



Anthony Fincham

Partner

T +44 20 7367 2783

E anthony.fincham@cms-cmck.com



Robert Davies

Partner

T +44 20 7367 3400

E robert.davies@cms-cmck.com



Graham Paul

Partner

T +44 20 7367 2458

E graham.paul@cms-cmck.com



Alison Woods

Partner

T +44 1224 26 7176

E alison.woods@cms-cmck.com



Gillian MacLellan

Partner

T +44 141 304 6114

E gillian.maclellan@cms-cmck.com



Finlay McKay

Partner

T +44 131 200 7632

E finlay.mckay@cms-cmck.com



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CMS Cameron McKenna LLP
Cannon Place
78 Cannon Street
London EC4N 6AF

T +44 (0)20 7367 3000
F +44 (0)20 7367 2000

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