

CORPORATE | 22 December 2015

The Modern Slavery Act 2015 – New Reporting Requirement

The Modern Slavery Act 2015 (the “Act”), which came into force in October 2015, strengthens the civil and criminal enforcement mechanisms relating to slavery, servitude, forced or compulsory labour and human trafficking, and is intended to provide better protection and support to victims. Section 54 of the Act introduces a new reporting requirement in relation to slavery and human trafficking for businesses carried on in the UK.

New Reporting Requirement

Commercial organisations (body corporates or partnerships, wherever incorporated or formed) must publish, for each financial year ending on or after 31 March 2016, a “slavery and human trafficking statement,” either:

(i) setting out the steps the organisation has taken to ensure that slavery or human trafficking is not taking place in any part of its own business and supply chain, or (ii) declaring that no such steps have been taken.

The Act lists information that may be contained in the statement. This includes:

- the organisation’s structure, its business and its supply chains;
- its policies in relation to slavery and human trafficking;
- its due-diligence processes in relation to slavery and human trafficking in its business and supply chains;
- 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;
- 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; or
- the training about slavery and human trafficking available to its staff.

Qualifying Commercial Organisations

A commercial organisation will be subject to this reporting requirement if it:

- supplies goods or services;
- carries on a business, or part of a business, in any part of the United Kingdom; and
- has a total turnover of at least £36 million.

Interpretation

Carries on a Business

The Act does not define the expression “carries on a business, or part of a business” in the UK. It may be possible to look at the Bribery Act 2010 for guidance on interpretation as the same expression is used in that Act. Furthermore, guidance from the Home Office (see below, “What is Next?”) suggests that a common-sense approach should be used to determine whether or not an organisation is carrying on a business in the UK.

Total Turnover

The total turnover is the annual global turnover. It will include the turnover of the commercial organisation and that of its subsidiary undertakings. It is not limited to turnover in the UK.

Subsidiaries whose total turnover is of at least £36 million will also have to publish a statement. They may be able to replicate their parent's statement, with any necessary amendment.

There is still some uncertainty relating to the application of this reporting requirement. For example, overseas companies with subsidiaries in the UK, or overseas companies with a UK customer base but no place of business or employees in the UK, will have to determine whether they themselves become subject to the requirement.

Approval and Publication of the Statement

The statement will have to be approved by the board of directors (or equivalent management body) and signed by a director (or equivalent) for body corporates and approved by members and signed by a partner, for limited liability partnerships.

The statement will have to be published on the commercial organisation's website and a link to the statement will have to be uploaded in a prominent place on the website's homepage. Commercial organisations without a website will have to provide a copy of the statement within 30 days of a request.

Sanction for Non-Compliance

The Secretary of State may seek an injunction to compel a commercial organisation to publish a statement. However, there are no fines for failing to comply or take steps to prevent slavery or human trafficking. Approving a false or misleading statement will not constitute a statutory offence. The real sanctions for non-compliance are likely to come from pressure from the public, shareholders and competitors, and the threat of reputational damage.

What is Next?

Commercial organisations likely to be caught by the new reporting requirement should decide what sort of statement they intend to publish and in light of this:

- investigate and identify high-risk industries and regions in which they do business or have suppliers;
- assess the proportionality of any already existing monitoring and procedural systems relating to slavery and human trafficking;
- assess the level of influence they may be able to have on their suppliers, and include provisions on compliance with the Act in supply contracts;
- train and/or appoint individuals who will be responsible for the reporting requirement; and
- train staff on the slavery, human trafficking and the reporting requirement under the Act.

The Government has, as required by the Act, issued guidance about the reporting requirement and that guidance,

"Transparency in Supply Chains etc. A Practical Guide", may be found at:

<https://www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide>.

CONTACTS

Mehran Massih

London

+44.20.7655.5603

mehran.massih@shearman.com

Michael Scargill

London

+44.20.7655.5161

michael.scargill@shearman.com

Annelize Taylor

London

+44.20.7655.5879

annelize.taylor@shearman.com

Helene Zotiades

London

+44.20.7655.5765

helene.zotiades@shearman.com

ABU DHABI | BEIJING | BRUSSELS | DUBAI | FRANKFURT | HONG KONG | LONDON | MENLO PARK | MILAN | NEW YORK
PARIS | ROME | SAN FRANCISCO | SÃO PAULO | SAUDI ARABIA* | SHANGHAI | SINGAPORE | TOKYO | TORONTO | WASHINGTON, DC

This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

9 APPOLD STREET | LONDON | UK | EC2A 2AP

Copyright © 2015 Shearman & Sterling LLP. Shearman & Sterling LLP is a limited liability partnership organized under the laws of the State of Delaware, with an affiliated limited liability partnership organized for the practice of law in the United Kingdom and Italy and an affiliated partnership organized for the practice of law in Hong Kong.

*Abdulaziz Alassaf & Partners in association with Shearman & Sterling LLP