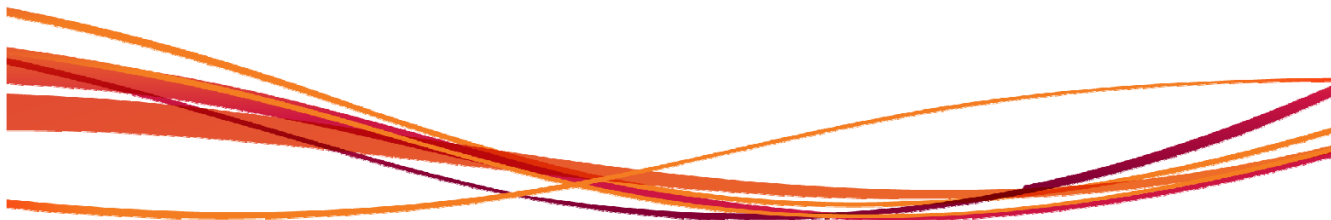


## HR Rely Guidance

### Guide to the Modern Slavery Act 2015

November 2015





## Guide to the Modern Slavery Act 2015

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## Guide to the Modern Slavery Act 2015

### Executive Summary

Over the past few years there have been a number of high profile media and online campaigns, which have targeted businesses for ‘exploitation’ of workers at some distance down their supply chains. This can pose a huge reputational risk if slavery is identified.

The **Modern Slavery Act (“The Act”)** received royal assent on **26 March 2015**. According to the Prime Minister the Act will *“tackle the worst exploitation”* and will place the UK in the top ten countries taking action against slavery worldwide. The Act adds to, and consolidates, existing slavery legislation, following reports from the UK and overseas that modern slavery is still prevalent.

**Section 54** of the Act will come into force on **29 October 2015**. It contains a ‘transparency in supply chains’ provision that will compel larger businesses (with a turnover of more than **£36 million**) conducting work in the UK to produce a yearly **“slavery and human trafficking statement”**. The Act is supported by **The Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015**.

The Act applies in the whole of the UK including Scotland and Northern Ireland.

The annual statement is expected to include a report on policies, training, due diligence processes and the effectiveness of the measures in place to tackle modern slavery and human trafficking. The report must be approved and signed by the highest tier within the business and published on the website.

Government guidance was issued on 29 October 2015 to assist employers to comply with the new reporting obligations.

### What constitutes slavery?

The term slavery encompasses: servitude; forced labour; human trafficking; sexual exploitation for money; and forced or servile marriage. Further guidance on what constitute “slavery and human trafficking” can be found in the following legislation:

- The offences of slavery, servitude and forced or compulsory labour and human trafficking in [sections 1, 2 or 4](#) of the Modern Slavery Act 2015.
- The offences of slavery, servitude and forced or compulsory labour and human trafficking in [sections 1, 2 or 4](#) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.
- The traffic in prostitution offence under [section 22](#) of the Criminal Justice (Scotland) Act 2003.

- The trafficking for exploitation under [section 4](#) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.
- The offences of slavery, servitude and forced or compulsory labour under [section 47](#) of the Criminal Justice and Licensing (Scotland) Act 2010.

Areas of industry where slavery is more commonly found include agriculture, construction, hospitality and the manufacturing sector.

It is important to note that slavery is not confined to developing countries. The UK reported a 47% increase in slavery during 2013 compared to 2012.

However In 'less developed' or more loosely regulated countries, slavery is a much bigger problem. In fact, reports from India suggest that some 14 million people are living as slaves within the country. Businesses operating within the UK with suppliers based in, for example, Africa and the Indian Subcontinent, will need to exercise particular care to ensure that they can demonstrate that they have obtained assurances that their supply chains are slavery-free.

## 'Commercial Organisation'

The term 'commercial organisation' in this context means:

- A corporate body, wherever incorporated, that carries on a business or part of a business in the UK. The term 'business' means the supply of goods and services but will also include a trade or profession.
- A Partnership, wherever formed, that carries on a business or part of a business in the UK. Partnerships covered are those within the Partnership Act 1890, a limited partnership registered under the Limited Partnerships Act 1907 and a firm, or an entity of a similar character, formed under the law of a country outside the UK.

The obligation does not just apply to UK incorporated businesses. It is important to note that The Act applies to any part of a business operating within the UK (including Scotland), regardless of their 'footprint'.

When producing the statement, an organisation must consider its subsidiary companies (whether in the UK and abroad) and its supply chain (whether in the UK or abroad). A subsidiary company may in some circumstances produce its own statement (see 'Turnover' below).

## Do Charities and Public Sector Organisations have to comply?

- It appears from the explanatory materials accompanying the legislation that charities and voluntary bodies will be included (if they meet the turnover threshold below).
- It is clear that the new legislation is not intended to apply to the public sector. The Government's impact assessment says that the costs of the Act for the public sector will be 'nil' and great emphasis is placed on the fact that the new rules apply only to 'commercial organisations' (which would normally appear to exclude the public sector). However, according to the definition of 'commercial organisation' used in the Act (see above) means that the rules apply to all 'corporate bodies' that 'carry on business' in the UK. This definition arguably captures some public bodies.
- The Government guidance issued when Section 54 came into force states that 'a common sense approach' will be applied to whether an organization can be said to be 'carrying on business' for the purposes of this legislation. It does not matter 'if the organisation pursues 'primarily charitable or educational aims or purely public functions. An organisation will be 'caught' by these provisions if the turnover threshold is met, 'regardless of the purposes for which those profits are made'.

## 'Turnover'

Details of how to determine Turnover for these purposes is set out in **The Modern Slavery Act (Transparency in Supply Chains) Regulations 2015**.

The commercial organisation's total turnover includes the turnover of that organisation and the turnover of any subsidiary undertakings less the deduction of trade discounts, VAT and any other taxes. This refers to global turnover and not just turnover in the UK.

Subsidiary companies will be required to produce their own statement under The Act if their individual turnover exceeds £36 million, but they are able to replicate their parent company's disclosure or modify it as necessary.

This £36 million threshold corresponds with the threshold under Companies Act 2006 for determining the size of a 'large' company. This means that any company that qualifies as 'small' or 'medium' under Companies Act 2006 will NOT have to produce a statement.

## Contents of the Statement

The statement MUST set out the steps that the organization has taken in the financial year to ensure that slavery and human trafficking are not taking place in any part of its supply chain or in any part of its own business. Alternatively, the statement MUST contain a declaration that no such steps have been taken. It is important to note that the only positive obligation on employers is to produce and publish the annual statement. A short statement which declares that no steps have been taken will fully discharge the legal duty (although there may be reputational risks associated with this approach).



However, section 54(5) of the Act also gives guidance on possible areas which MAY be included within the statement, to include:

- The organisation's structure, 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; and
- The training about slavery and human trafficking available to its staff.

The guidance issued by the Home Office is not prescriptive about the layout or specific content of the annual statement. However, it states that, as a 'public-facing' document, the statement should be written in 'simple language' that is easy to understand and may contain links to relevant supporting material rather than reiterating other company policies at length.

## Who must sign the Statement?

Under s54 (6) of the Act the statement must be approved as follows:

- **Companies:** The board of directors must approve the statement and it must be signed by a director.
- **Limited liability partnerships (LLPs):** The LLP members must approve the statement and it must be signed by a designated member.
- **Limited partnerships registered under the Limited Partnerships Act 1907:** A general partner must sign the statement.
- **Other types of partnership:** A partner must sign the statement.

## Publication – How?

The statement must be published on the organisation's website and a link to the statement must be displayed 'in a prominent place' on that website's homepage (s.54 (7)). According to the Government guidance this means a clearly visible link on the homepage, or a link in a clearly visible menu on that homepage. If the organisation has more than one website, a link to the statement should be included on each relevant website.



If the business does not have a website, it must provide a copy of the statement within 30 days following a written request. For both reputational and commercial reasons, it is anticipated that the majority of affected businesses will publish their statement.

## Publication – When?

It is anticipated that organisations will produce and publish the report at their financial year end.

However, it is important to note that the Government has implemented transitional provisions to give businesses time to prepare. The new reporting requirement will not apply to a financial year ending before **31 March 2016**.

This means that, if an organisation's financial year end date falls before **31 March 2016** it will not have to produce a report in this financial year. It can wait until the end of the 2016–2017 financial year.

If an organisation's financial year end falls on or after **31 March 2016** it will be required to produce a report for the current financial year. However, the Government guidance makes clear that some flexibility is permitted. It states that the statement should be published 'as soon as reasonably practicable' after year end, and preferably within 6 months of the year end date. The guidance anticipates that many organisations will choose to publish the statement alongside any other annual or non-financial reports they are required to produce.

## Enforcement and consequences of non-compliance

Penalties for non-compliance are limited. Enforcement actions may be taken by the Secretary of State, who can compel a business to produce a slavery and human trafficking statement in civil proceedings, by way of an injunction or, by statutory performance if in Scotland. This is likely to be a rare occurrence.

However, it is anticipated that pressure groups will target businesses in vulnerable sectors (e.g. clothing retail) exposing them to reputational risk if they fail to produce a report. Furthermore, the Government has suggested that it may 'name and shame' businesses which fail to comply (although there is no mention of this in the guidance issued to support Section 54)

Businesses may also find that a failure to comply will have an impact on the ability to successfully tender for work (especially public sector contracts) or to attract investment. Businesses may risk breaching 'ethical procurement' terms in contracts if this information is not published.

## Appropriate steps

To prepare to produce and publish the 'slavery and human trafficking statement' businesses should consider:

- An information gathering exercise to understand what steps are currently taken across the business to ensure slavery is not taking place. Such steps may vary across business lines and functions.

- Risk assessment to determine where the risk of modern slavery and trafficking may lie within the organisation and supply chains. This might involve examining data on high risk geographies, activities, sectors, products and services.
- Undertaking a business and supply chain audit with the intention of drilling down further into the location and business model of suppliers. Businesses with complex multi national supply chains may need simply to start 'mapping out' those supply chains as a first step.
- How the business might better engage with suppliers to obtain the assurances they need. For example will suppliers be audited or required to self-report/make a declaration as to compliance?
- Checking for the existence of anti-slavery clauses in contracts with suppliers and/or amending contracts appropriately.
- Incorporating anti-slavery compliance into other policies and procedures such as codes of conduct, whistleblowing policies and standard procurement terms.
- What training is or could be provided on the avoidance of slavery and human trafficking. How can employees be equipped with the skills to identify a supplier that may take advantage of workers or participate in slavery?
- Training PR and communications teams to deal with queries once a statement is published (especially if the organisation is 'high profile' or in a 'vulnerable sector' such as clothing retail).

Full reporting and compliance is likely to take time. As a first step it may well be sufficient for businesses to identify any information or action gaps and to set out what its plans are to strengthen existing processes or put in place new ones. It is anticipated that many businesses will report 'in steps', setting out year on year the various phases in the development of compliance programme. The annual statement should provide evidence that a business is considering the issues and examining its own processes rather than demonstrating full compliance from the outset. The Government guidance suggests that the legislation is primarily intended to stimulate a 'race to the top' and promote good practice.

## Useful Links

- The Modern Slavery Act 2015 – Section 54  
<http://www.legislation.gov.uk/ukpga/2015/30/section/54/enacted>
- Explanatory note to accompany Section 54  
<http://www.legislation.gov.uk/ukpga/2015/30/notes/division/5/6/1>
- The Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015  
<http://www.legislation.gov.uk/uksi/2015/1833/contents/made>
- Explanatory Memo to accompany the Regulations (DRAFT)  
<http://www.legislation.gov.uk/ukdsi/2015/9780111138847/memorandum/contents>
- Home Office Document '[Transparency in Supply Chains: A Practical Guide](#)' – Published 29 October 2015.



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