

Client Update

Organisations Carrying on Business in the United Kingdom Must Now Publish Annual “Slavery and Human Trafficking Statement”

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From October 2015, all commercial organisations — wherever incorporated — carrying on business in the United Kingdom with global turnover of £36 million or more will be required to publish an annual “slavery and human trafficking statement” setting out actions the organisation has taken to ensure that slavery and human trafficking is not taking place in its supply chains or business. This requirement is contained in the UK Modern Slavery Act 2015 (the “Act”).

APPLICABILITY

The obligation to publish an annual slavery and human trafficking statement applies to commercial organisations which provide goods or services and meet the turnover threshold of £36 million. Turnover is to be calculated as the amount derived by a commercial organisation and its subsidiaries from ordinary activities, after deduction of trade discounts, value-added taxes and other related taxes. For these purposes, “commercial organisation” means bodies corporate or partnerships (wherever incorporated or formed) that carry on a business or part of a business (including a trade or profession) in the United Kingdom.

Like the UK Bribery Act 2010, the Act has an extra-territorial reach. Commercial organisations do not need to be incorporated or formed in the UK for the Act to apply to them, and it appears that a physical presence in the UK will not be necessary. There is no de minimis exception; if the organisation carries out any part, however small, of its business in the UK, it will be subject to this requirement.

The Act does not impose any financial or criminal penalties for non-compliance, although the Secretary of State can enforce this requirement through an injunction.

STATEMENT CONTENT

The required “slavery and human trafficking statement” is either (i) a statement of the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business, or (ii) a statement that the organisation has taken no such steps. Beyond this, the Act does not set out any mandatory content requirements for such a statement, nor does the Act require commercial organisations to take any particular action other than preparing and publishing the statement. An organisation could, in theory, comply with the Act simply by stating that it has taken no relevant steps, although this would expose the organisation to reputational risk as well as the increasing risk of litigation concerning corporate human rights responsibilities. The Act itself does not specify when the statement for a particular year is due. It is anticipated that this will be clarified in the additional guidance expected to be published in October 2015.

The Act specifies six areas of information that a business may include in its slavery and human trafficking statement:

- 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 that 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 key performance indicators; and
- the training about slavery and human trafficking that is available to its staff.

The Home Office has indicated that the anticipated further guidance will also set out the kinds of information that might be included in the slavery and human trafficking statement. Their stated aim is for “businesses to take the issue of modern slavery seriously at the highest levels and for businesses to be able to determine, demonstrate and explain their policies and practices relevant and specific to their own circumstances. We fully expect slavery and human trafficking statements to differ from business to business.” The Home Office has acknowledged that, for example, an organisation which provides services, and is

entirely based in the UK, may need to disclose much less information than a retailer with suppliers all over the world.

APPROVAL AND PUBLICATION OF THE STATEMENT

The Act requires that the slavery and human trafficking statement must be approved and signed at a senior level within the business. For companies, the statement must be approved by the board and signed by a director (or equivalent); for limited liability partnerships, the LLP members must approve the statement and it must be signed by a designated member; for limited partnerships, the general partner must sign the statement; and for any other kind of partnership, the statement must be signed by a partner.

The statement must be published on the organisation's website, if it has one, and there must be a prominent link to it on the website's home page. The Act, as well as an associated Consultation Paper issued by the UK government, suggests that the obligation to publish the statement is entity specific, falling on those companies within a group that carry on all or part of their business in the UK. Accordingly, if both a parent company and a subsidiary carry on business in the UK (and meet the required turnover threshold together with their respective subsidiaries), then each will be required to publish a statement, although the Consultation Paper notes that in practice one statement may be produced as long as the statement covers the full business and the supply chain of the parent and the subsidiary and is placed on both the parent's and the subsidiary's websites. Where an organisation does not have a website, it must provide a copy of the statement within 30 days to anyone who requests one in writing.

NEXT STEPS

A statement will be required in respect of financial years ending after October 2015. The Home Office has stated that, to give businesses sufficient time to prepare for this new requirement, transitional provisions will be developed so that statements are not required where the financial year end of the business is within close proximity to October 2015, although a December year end is unlikely to benefit from these transitional arrangements.

Any organisation which expects to be caught by this new requirement may wish to take preparatory steps, even in advance of the anticipated October guidance, to facilitate compliance. Such steps could include: carrying out an assessment as to which parts of its supply chain (if any) carry a risk of slavery and human trafficking activities; framing policies on slavery and human trafficking for internal purposes and for suppliers; setting up internal systems to monitor compliance; and ensuring that supplier policies are incorporated into supplier selection processes.

These requirements are another step towards increased reporting of human rights issues for businesses. Since 2013, the UK has required listed companies to report publicly on human rights issues, allowing watchdogs and competitors to scrutinise companies' human rights performance, and the EU is due to follow suit. Under the Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013, quoted companies must now carry out specific reporting on environmental matters, the company's employees, and social, community and human rights issues, to the extent necessary for an understanding of the development, performance or position of the business. In addition, the EU Directive on the Disclosure of Non-Financial and Diversity Information will require large listed companies and other public interest entities across the EU to publish a non-financial statement containing information on human rights, bribery and anti-corruption matters.

In general, the Act and the related EU developments show the growing willingness of English and European rule makers to exercise jurisdiction over non-European companies who do business or are quoted in Europe. Anyone doing business in the United Kingdom should be increasingly careful to monitor compliance with applicable local laws.

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If you have any questions about how your organisation can best prepare for this new requirement, please get in touch either with one of the authors or your regular Debevoise & Plimpton LLP contact.