

## TRANSPARENCY IN SUPPLY CHAINS: UK GOVERNMENT STRENGTHENS EXPECTATIONS ON BUSINESSES REPORTING UNDER THE UK MODERN SLAVERY ACT 2015

Two years since the reporting requirement under section 54 of the Modern Slavery Act 2015 (MSA) came into effect, the UK government has issued updated statutory guidance, available [here](#). The guidance highlights the benefits to businesses of producing modern slavery statements, even if they are not strictly required to do so, and draws on best practice to assist organisations to comply with their reporting obligations. The key revisions are explained in this briefing, which also considers currently proposed amendments to the MSA and developments in Australia towards introducing legislation based on the MSA's reporting requirement.

### THE REPORTING REQUIREMENT AND STATUTORY GUIDANCE

The MSA requires any commercial organisation (whether a body corporate or a partnership, and whether incorporated or formed in the UK or elsewhere) which supplies goods and services and has a turnover of £36 million or more, to produce a slavery and human trafficking statement for each financial year in which the criteria are met. The statement should either set out the steps taken to address slavery and human trafficking in the organisation's own business and in its supply chains, or state that no such steps have been taken. Our previous briefing explaining the requirement is available [here](#).

Statutory guidance was first issued in October 2015, and was updated on 4 October 2017.

### SMALLER ORGANISATIONS

The guidance makes clear that even where organisations are not legally obliged to produce a statement under the MSA, they may still report voluntarily. The guidance highlights the practical benefits of doing so, given that they may be asked by those in their supply chain if they have a policy on tackling modern slavery, and may find themselves competing for work alongside larger companies who are required to provide statements. Whether or not the legislation applies, the government encourages all businesses to be

#### Key points in the revised guidance:

- Organisations not caught by section 54 of the MSA may nevertheless choose to issue statements detailing the steps they have taken to prevent modern slavery. Often, this may help meet requirements of third parties in their supply chains, or to meet the standards set by potential customers in competitive procurement processes.
- Each statement should provide a "detailed picture" of all steps taken to address modern slavery.
- Statements should be filed no later than 6 months after financial year end.
- Commercial organisations should report annually, even if they fall below the turnover threshold in some years.
- Statements from previous years should be kept online to aid scrutiny by the public and other stakeholders.

open and transparent in relation to their recruitment processes, policies and procedures.

## **CONTENT OF THE STATEMENT**

Although the areas for possible coverage in a modern slavery statement set out in section 54(5) of the MSA remain optional, the guidance now emphasises the government's expectation that a modern slavery statement "should aim" to include information covering those areas (including organisational structure, policies, due diligence, risk exposure, effectiveness at tackling modern slavery and training). This strengthens the position taken in the initial guidance. The guidance also now stipulates that the organisation should "paint a detailed picture" of all the steps it has taken both to address and to remedy modern slavery, as well as the effectiveness of those steps.

The guidance highlights the role that the public, investors, media and other third parties play in scrutinising statements. In particular, the government highlights the expectation on commercial organisations to progressively improve their approach to modern slavery risks each year, and to approach the problem of modern slavery in a collaborative and open manner.

## **SIGNING AND AUTHORISING THE STATEMENT**

There are two mandatory provisions in respect of the authorisation and signature of the modern slavery statement by commercial organisations. The first is that it is authorised by the board (or equivalent for partnerships) and the second is that it is signed by a director (or equivalent). It remains the case that each organisation must assess for itself how to approach this requirement based on its internal governance. That said, the government has identified that it is best practice for the director who signs the statement to also be a director who sits on the board that approved the statement. Also, the government has specified that the date of the approval by the board should be included in the statement.

## **CONTINUITY OF REPORTING**

The mandatory reporting obligation applies for every year that the organisation satisfies the criteria of section 54 of the MSA. In the guidance, the government strongly recommends that commercial organisations that have produced statements continue to do so even in years where the criteria do not all apply (for example, if the £36 million threshold is not met in a particular year). This allows the organisation to build up its approach to modern slavery year on year, and demonstrates a commitment to tackling the issue.

## **TIMING OF PUBLICATION**

The amended guidance states that the statement should be produced as soon as possible after an organisation's financial year end and there is an expectation that this will be no later than 6 months thereafter. Reporting organisations should keep statements from previous years on their websites to allow comparisons between the statements and to facilitate the monitoring of organisations' progress in combating modern slavery risks over time.

## **POSSIBLE AMENDMENT OF THE MSA**

There are calls to strengthen the reporting requirement, with a private member's bill progressing through Parliament. HL Bill 57 proposes legislation that would:

- clarify that the reporting requirement also applies to public authorities,
- require that information in each of the areas listed in section 54(4) MSA are set out in the statement,
- require the government to publish a list of all commercial organisations that are required to publish a statement, broken down by sector, and
- amend the Public Contracts Regulations 2015 such that organisations will be excluded from public procurement processes if they have not published a statement (and should have done so).

## **INTERNATIONAL CONSENSUS TOWARD COMBATING MODERN SLAVERY**

The UK's commitment to tackling modern slavery has not waned. The Prime Minister has made clear that business should not be knowingly or unknowingly complicit in modern slavery crimes. Indeed, at the recent UN General Assembly session in September, the Prime Minister announced that the UK would direct £150 million of funding at modern slavery initiatives both at home and abroad.

The UK's stance is in line with global political commitments to abolish slavery including Sustainable Development Goal 8.7 to take immediate and effective measures to end forced labour, modern slavery, human trafficking and child labour in all its forms, including the worst forms of child labour by 2030; and the G20 Leaders' Declaration to take immediate and effective measures to eliminate forced labour, human trafficking and all forms of modern slavery and to eliminate child labour by 2025.

It also reflects increasing efforts internationally to introduce legislation which focuses on the role that the business sector can play in combating slavery-like practices. The Australian government is currently consulting on a modern slavery reporting requirement which, if passed, will be similar to the MSA's reporting requirement, although mandatory content and the creation of a central repository for modern slavery statements are contemplated. Under the Australian proposal, "large" companies operating in Australia, with a turnover of more than \$100 million, would be required to produce and make publicly available annual reports detailing all steps taken to ensure that they and their supply chains are free of slavery. Similar reporting requirements are already in place in California under the California Transparency in Supply Chains Act 2010, which entered into force in 2012. Corporate reporting on modern slavery is here to stay.

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