

TRANSPARENCY IN SUPPLY CHAINS

STATUTORY GUIDANCE PUBLISHED

The Home Office has on 29 October 2015 published guidance ('Transparency in Supply Chains etc. A practical guide') on the requirement in section 54 of the Modern Slavery Act 2015 for commercial organisations with an annual turnover of at least £36m to produce an annual 'transparency in supply chains' statement.

In the foreword to the guidance, the Home Secretary Teresa May said 'Modern slavery is a heinous crime that affects communities and individuals across the globe. That is why the transparency in supply chains provision in the Modern Slavery Act 2015 is so vital in our fight against this evil. A truly ground breaking provision, the transparency measure will require businesses to be transparent about what they are doing and will increase competition to drive up standards'.

It is clear not just from the Guidance, but from the parliamentary debate and publications since, that the Government expects the requirement to prepare an annual statement to be peer and consumer led rather than merely a legal requirement. The Home Secretary goes on to say in the foreword, 'By increasing supply chain accountability, more workers will be protected and consumers will have greater confidence in the goods and services they buy'.

When will organisations have to produce the statement?

Although the requirement to produce the statement is now in force, the statutory Guidance contains transitional provisions. An organisation with a financial year-end before 31 March 2016 will not be required to produce the statement until the next financial year-end. However for organisations with a year-end on or after that date, the statement will be required in that financial year. So if a business's year ends on 30 March 2016 the organisation will have until 30 March 2017 to prepare the report. However if the year-end is on or after 31 March, say 30 April 2016, then the statement must be produced by then.

Despite this, the Guidance also states that the statement must be published 'as soon as practicable' after the financial year end and gives an indication that 6 months would be an acceptable timeframe. The first statements will technically be due from 31 March 2016 but do not need to be published until around September 2016.

Which organisations have to produce the report?

The Act states that an incorporated body or a partnership, which carries on business in the UK, supplies good or services, and has an annual turnover of at least £36m, must prepare the statement.

Turnover includes that of its subsidiary undertakings whether in the UK or not.

In cases where there is a foreign parent or subsidiary, the Guidance is not entirely clear as to when an organisation will be regarded as carrying on a business or part of a business in the UK (and therefore has to prepare a statement) and states a 'common sense' approach must be applied.

In summary, the law does not require a foreign parent to produce the report if it has no 'demonstrable business presence' in the UK, but if its subsidiary does have such a presence in the UK then it must prepare the statement, which should include the parent if it is part of the supply chain.

Separate organisations in a group structure are permitted to use the same report as long as the statement deals adequately with each organisation's supply chain.

Incorporated charities will need to prepare the statement.

What should be in the statement?

The Act states what 'may' be in the statement rather than what must be. This follows the Government's main theme that the production of the statement should be voluntary and / or led by commercial realities rather than prescriptive black letter law. Section 54 suggests the statement may include:

- the organisation's structure, its business and supply chain
- 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
- risk of slavery and trafficking and steps to manage that risk
- its effectiveness of ensuring there is no slavery or trafficking in its business and supply chain, measured against performance indicators
- training of staff.

The Guidance encourages the statement to be succinct and accessible, so not containing mostly legal language. If the organisation has relevant policies, such as CSR or ethical, they should be included in the statement or referenced.

The Guidance suggests the content of internal policies to protect against slavery and human trafficking should be included in the statement and might contain:

- Minimum labour standards
- Who in the business is responsible
- How the business factors full labour costs into sourcing and production to avoid the need for cheaper slave or bonded labour
- What is the organisation's policy where a supplier is found to have been involved in modern slavery
- What checks are made when entering into new or extending contracts
- What due diligence the organisation commits to.

Due Diligence

It was expected that the Guidance might be more specific as to how far down the supply chain the organisation should look. However, continuing the general theme, the Guidance suggests what could be done rather than what should be done and considerable discretion is left to the individual organisation. Although less prescription is welcome, it does mean that organisations looking to be compliant only might struggle to understand where that line is. Perhaps that is the point as it forces standards upwards in a 'race to the top'.

The Guidance seems to suggest that the primary obligation will be to engage with first-tier suppliers. However each individual organisation has responsibility for ensuring there is no modern slavery or human trafficking and how far down the supply chain the organisation goes is dependant on the particular industry, the location of its suppliers, and indeed the organisation's own view on the matter.

A professional services organisation based only in the UK, for example, may decide to stop at its first-tier suppliers, primarily making sure that any workers under the control of a contractor are being treated and paid properly. However, a retail business, which buys goods from countries such as China, or in south-east Asia and Africa, may wish to go much further down the supply chain. The Guidance says 'many human

rights breaches, including modern slavery, are not immediately apparent. In fact, some suppliers may even go to great lengths to hide the fact that they are using slave labour'. It will therefore be for individual organisations to decide how far down the chain it should look.

Performance Indicators

It is not just a matter of the organisation asking its suppliers if they have practices which ensure there is no modern slavery or human trafficking, but also ensuring that the organisation itself is not doing anything which inadvertently encourages modern slavery. So, again to use an example, if the business is a major supermarket and it awards contracts mostly based on the lowest price, or speed of delivery, then this might be seen as encouraging its suppliers to act in a way which is detrimental to its employees or its contractors.

What should my organisation be doing?

This depends on when the statement is due but all organisations which will be required to prepare the statement should start thinking about whether they have sufficient practices in place to ensure compliance.

One of the first steps should be to decide whether your organisation is in a higher risk industry or has suppliers located in higher risk countries and identify how many suppliers your organisation actually has. The organisation will need to decide how far down the supply chain it needs or wants to go, the questions it will ask of its suppliers, and the policies it will put in place in the event that a supplier is engaging in what could be described as modern slavery or human trafficking.

In parallel, the organisation will need to start looking at itself, including its procurement policies, how it treats its own staff, and training.

Blake Morgan can provide support throughout this process, be it initial advice as to how your organisation can strengthen its compliance or in actually preparing the statement (which must be signed off by top level management).

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