



HUMAN RIGHTS AT SEA

BRIEFING NOTE

THE UK MODERN SLAVERY ACT 2015

1. Introduction

The British Modern Slavery Act 2015 ('the Act') has been designed to encourage companies that outsource or subcontract work to take responsibility for every stage of their business.¹ The most important mechanism in the Act is found in Section 54, the transparency in supply chains provision.² This requires large companies, with a presence in the UK, to publish a statement on their website detailing the steps they have taken to ensure there is no slavery or trafficking within their organisation or supply chains. The British Government hopes that the information will allow shoppers to make 'more informed decisions at the checkout', and provide a 'strong

¹ 'The Modern Slavery Act 2015: Corporate Reporting Requirements to Tackle Slavery in Supply Chains | Doughty Street International'.
²

<http://www.legislation.gov.uk/ukpga/2015/30/section/54/enacted>

incentive for businesses to take the issue seriously'.³

2. What is 'Modern Slavery'?

The term is defined broadly in the Act, and in relation to a number of international instruments such as Article 4 of the European Human Rights Convention.

Modern slavery in this context encompasses slavery, servitude, forced or compulsory labour, and human trafficking.⁴ Broadly speaking, 'slavery' involves exercising ownership over another person or coercing them into providing services under threat of a penalty. 'Human trafficking' refers to arranging or facilitating the transport of individuals in order to exploit them.⁵

The UN acknowledges that Modern Slavery is a global problem, estimated to be worth a minimum of US\$32 billion per year. In particular, the sectors most likely to be affected are construction, agriculture, textiles, security, food processing and packaging, hospitality and tourism.⁶

³ Gentleman, 'UK Firms Must Show Proof They Have No Links to Slave Labour under New Rules'.

⁴ Syder, 'The Modern Slavery Act 2015 - What Businesses Need to Know | Lexology'.

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<http://www.legislation.gov.uk/ukpga/2015/30/part/1/crossheading/offences/enacted>

⁶ Noblet et al., 'The Modern Slavery Act 2015'.

3. Who is affected?

Section 54 requires certain organisations to produce a statement every tax year. To have an obligation under Section 54, organisations must:

- be a 'commercial organisation', i.e. companies or partnerships;
- supply goods or services;
- operate in the UK, or be part of an organisation that operates in the UK;
- Have a global turnover of at least £36 million annually.

Crucially, foreign businesses may be affected as well as UK businesses.⁷ There is no requirement that companies conduct a certain amount of business in the UK. The Act applies if a company is carrying out business, or is part of a business, in any part of the UK.⁸ It is also possible that both parent and subsidiary companies will have independent obligations to produce a statement.⁹

The Home Secretary has also issued guidance on the statement, clarifying that organisations that pursue exclusively charitable, educational, or public functions can also be regarded as a 'commercial organisation' and may therefore be required to produce a statement.¹⁰

⁷ Ibid.

⁸ 'Shift_Mapping Modern Slavery Act Against UNGPs Note_July2015.pdf'.

⁹ Wilson et al., 'The Modern Slavery Act'.

¹⁰ Ibid.

The Government is initially only targeting large organisations, as it believes they will have the resources to undertake the necessary due diligence. As much of the power of the Act is based on damage to reputation, the government also believes that only large companies will have sufficient purchasing power and influence to create effective change within a supply chain.¹¹ Overall, the government estimates that at least 12,260 companies will have obligations under Section 54.

4. Reporting requirements

Section 54 requires any affected organisation to prepare a '**slavery and human trafficking statement for each financial year of the organisation**'.¹² This statement must be published in a prominent place on the homepage of the organisation's website, and be approved and signed by a director.

While the act came into force in October 2015, not all organisations will be initially required to publish a statement. The first reports will only be due from organisations whose financial year-end on or after the 31 of March 2016.¹³

¹¹ Noblet et al., 'The Modern Slavery Act 2015'.

¹² Section 54 (1)

¹³ 'A Few Questions and Answers about the Modern Slavery Act | Ergon Associates'.

5. Detail to be contained within company statements

Organisations publishing a 'slavery and human trafficking' statement have two options for the content of their statement. First, they must confirm that the organisation has taken steps during the last financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains and in any part of its own business. Alternatively, organisations can choose to expressly state that they have taken no such steps.

The Act includes a list of information that organisations 'may include' in their slavery and human trafficking statement, including:

(a) the organisation's structure, its business and its supply chains;

(b) its policies in relation to slavery and human trafficking;

(c) its due diligence processes in relation to slavery and human trafficking in its business and supply chains;

(d) 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;

(e) 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;

(f) the training about slavery and human trafficking available to its staff.¹⁴

However, it is important to note that the list of relevant information in Section 54(5) is non-exhaustive.¹⁵ As a result, the information provided in the Act should be viewed with the Government's stated intention to increase transparency in mind.

Essentially, organisations should consider providing evidence of:

- an organisation wide policy commitment in relation to slavery and human trafficking;
- the effectiveness of this policy, and details of its implementation within the organisation;
- the organisation's human rights due diligence processes in relation to slavery and human trafficking in its operations and supply chains.¹⁶

The starting point for human rights due diligence should be the UN Guiding Principles on Business and Human Rights.¹⁷ Crucially, this should include:

- identifying the parts of an organisations operations and supply chains that are most at risk of slavery and human trafficking,

¹⁴ Section 54(5)

¹⁵ Gentleman, 'UK Firms Must Show Proof They Have No Links to Slave Labour under New Rules'.

¹⁶ Shift Mapping the Modern Slavery Act against the UNs General Principles Note'.

¹⁷

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

particularly where they would be the most severe in terms of the impact on people, and where they are the most likely to occur;

- explaining the steps a company has taken to assess and manage those risks.

6. Failures to report and enforcement

Unlike other recent pieces of legislation, such as the Bribery Act 2010, the Act contains only limited enforcement mechanisms. Instead, the Government considers the greater incentive for organisations to be reputational rather than legal.

Specifically, evidence from California where there is similar legislation in place, suggests that public pressure, media scrutiny and the actions of NGOs will encourage businesses to take steps to investigate their supply chains.¹⁸ This pressure is also expected to insure that few organisations will choose to publish statements stating they have taken no action in the last financial year.

If an organisation fails to produce a Section 54 statement entirely, the Secretary of State has the power to apply to the High Court for an injunction forcing the organisation to comply.¹⁹

As the Act relies primarily on public perception as an enforcement

mechanism, there are likely to be significant differences between the approaches of organisations in different sectors.

For example, an organisation operating entirely within the UK may have a lower risk profile than an organisation undertaking work in a higher risk jurisdiction. This is particularly the case for organisations operating in jurisdictions with historically poor labour practices. For these organisations, it seems likely a higher level of due diligence and preventative measures will be required.

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¹⁸ Ince and Powis, 'The Modern Slavery Act'.

¹⁹ Section 54(4)