

Modern slavery and human trafficking

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INTRODUCTION

Section 54 of the Modern Slavery Act 2015 (MSA) requires that any commercial organisation operating in the UK with a global turnover of £36 million or more must publish a slavery and human trafficking statement each financial year, setting out steps taken to ensure that there is no human slavery or human trafficking in its business or supply chain.

This includes any limited company or partnership which supplies goods or services. Turnover for the purpose of the MSA includes the income of any subsidiary company, whether in the UK or not.

What does this mean?

- A statement must be produced for each financial year after 31st March 2016.
- There is no prescribed form; a business has complied if it simply states “we have taken no steps”.
- The statement must be approved by the board and signed by a director or equivalent.
- The statement must appear on the company website, with a clear link on the home page.
- There are no criminal sanctions for noncompliance; however in theory the Secretary of State could apply for an injunction against a defaulting company.
- No enforcement has been taken against any organisation since the creation of the obligation.
- Where a parent and one or more subsidiaries is required to produce a statement, the parent may produce a statement that subsidiaries may rely upon, provided it deals with the supply chain of the subsidiary.

The Offences

There are three offences. It is a crime to engage in:

- Slavery or servitude, or
- Forced or compulsory labour, or
- Human trafficking.

A person commits an offence if he knows, or ought to know, that a person who he requires to carry out labour is being forced or coerced to carry out that labour. The

consent of the person performing the work does not preclude a determination that he is carrying out forced labour as per section 1(5) MSA. UK businesses are unlikely to inadvertently commit the primary offences under MSA – but risks may exist; e.g. in relation to staff provided by gangmasters or worker agencies.

In order to commit the criminal offence, the offender must;

- Intend to exploit the victim or
- Know or ought to know, that another is likely to exploit them.

Slavery or servitude

Construed in accordance with the European Convention on Human Rights (ECHR), a person kept in slavery is one who is:

- Denied their liberty, or
- Compelled to provide services by coercion, or
- Is treated as being “owned”.

Forced or compulsory labour

Labour which is extracted by coercion, oppression or deception of the worker, regardless of whether he is aware of the situation.

Human trafficking

The arranging or facilitating the victim's travel (including with their consent) with a view to them being exploited. Exploitation includes subjecting the victim to force, threats or deception to induce him to provide any services; or, using the fact that the victim is a child, or disabled, or has a family relationship, to induce them to provide services where a person to whom that disadvantage did not apply would be unlikely to provide services.

What is a supply chain?

MSA requires relevant companies to report of their “supply chains”. This term is not defined. The Government guidance document “Transparency in Supply Chains” says that the term “supply chain” has its “everyday meaning”. Wikipedia defines “supply chain” thus; “a system of organisations, people, activities and resources involved in moving a

product or service from supplier to customer". At its narrowest, it is difficult to see how many organisations in the service or financial sectors have a supply chain which is likely to be at risk of involving modern slavery. Many organisations in their statements are blurring the lines between the supply chain and the products which they buy in order to run their business. For example, Barclays Bank refer to its supply chain as including suppliers of corporate uniforms. But this probably goes further than the act requires.

What should be in the statement?

MSA requires very little as a minimum. A review of published statements strongly suggest that organisations wish to produce lengthy statements, often illustrated with photographs and graphics, containing information and/or statements relating to human rights and corporate citizenship generally. Statements relating to the MSA duty typically represent a relatively small part of most statements. Some sectors may result in higher risk and may include sectors such as agriculture, textiles, construction, extraction/mining.

Commonly used elements of the MSA statement:

1. Summary of the MSA and the Company's approach to it.
2. Summary of the Company's approach Human Rights/ Corporate Citizenship generally. Given examples of industry – wide bodies or initiatives. Reference other policies – e.g. Minimum wage, money laundering, Human Rights.
3. Consider advocating a risk-based approach to MSA – which geographical areas or sectors is the company involved in which is most likely to be at risk of Modern Slavery?
4. A Summary of the supply chain, identifying geographical risks.
5. A description of the due diligence processes adopted in relation to the supply chain.
6. Summary of training available to staff.
7. A statement relating to policy and approach to child labour in supply chains.



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