

IN 1330 – UK Modern Slavery Act: New corporate reporting requirements

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The UK Modern Slavery Act 2015 (“MSA”), which came into force on 29 October 2015, addresses the rise of new forms of slavery. The objective of the MSA is to consolidate slavery and human trafficking offences whilst increasing the maximum penalties and sentencing rules for such crimes. In addition, it establishes an independent Anti-Slavery Commissioner and introduces new compensatory measures and protections for victims of trafficking. Finally, it provides for the confiscation of vehicles, ships and aircraft used for the purposes of trafficking.

Marine contractors and shipowners with links to the UK may, therefore, need to review their anti-slavery and anti-trafficking policies. Marine contracting may be particularly affected as an industry, since in certain circumstances the Act provides for the forfeiture of vessels that have been used for modern slavery and/or trafficking.

1. Who is required to publish a statement?

As of 31 March 2016, section 54 of the MSA requires all companies carrying on – wholly or in part – a business in the UK with a turnover of £36 million or above to publish details on their websites of the steps taken to ensure slavery is not present in their supply chain or business. The key concept here is that of an organisation which ‘carries on a business’. The courts will be the final arbiter as to whether an organisation ‘carries on a business’ in the UK taking into account the particular facts in individual cases.

Organisations with a financial year-end from 29 October 2015 up to and including 30 March 2016 are not required to issue a slavery and financial statement for the financial year 2015/16. Nevertheless, organisations with a financial year-end of 31 March 2016 will be required to publish their statement for the financial year 2015/16 within 6 months of the end of their financial year.

2. How to write a slavery and human trafficking statement?

The slavery and human trafficking statement should be succinct but cover all the relevant points and provide appropriate links to the organisation’s relevant publications, documents or policies.

The national regulator has not been prescriptive about the layout or specific content of the statement. It is up to organisations how they present information in the statement and how much detail they provide. However, organisations shall include in the statement all the steps they have taken.

The information presented in the statement will be determined by the organisation’s

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sector, the complexity of its structure and supply chains, or the particular sectors and nations its suppliers are working in. The statement should be in English, but may also be provided in other languages, relevant to the organisation's business and supply chains.

As an example, a statement may include information about:

- 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 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 such performance indicators as it considers appropriate.
- The training and capacity building about slavery and human trafficking available to its staff.

3. What do I need to do?

When it comes to good practice, companies are encouraged to:

- Develop anti-slavery and human trafficking policies; and/or include these in corporate social responsibility (CSR) policies.
- Establish processes to investigate business and supply chain (contractors, sub-contractors, suppliers, etc.) to determine the level of exposure to risk.
- Identify high risk areas in the supply chain and plan what steps are being taken to address the risks.
- Prioritise their supply chain and conduct checks on products and services with a high content of low skilled or semi-skilled workers.
- Appoint senior individual(s) within companies with responsibility for investigation, compliance and the production of the statement.
- Identify training needs within companies to ensure that all responsible staff involved in supply chain management and procurement are aware of the new obligations.
- Put in place effective grievance and whistle blowing mechanisms to cover any concerns about slavery or human trafficking within any business or supply chain.

4. What if I don't publish a statement?

Over 12,000 companies and their UK and international supply chains are affected by the new Act. However, the enforcement and legal ramifications of the new Act constitute a contentious issue. The legislation includes new measures including trafficking reparation orders, which encourage the courts to use seized assets to compensate victims and prevention orders to ensure that those who pose a risk of committing modern slavery offences cannot work in relevant fields.

Those that don't disclose information demonstrating effective action will be breaking the law as well as facing potential reputational risks in the form of a

backlash from shareholders, consumers and campaigners. The Secretary of State is empowered to seek an injunction against a non-compliant organisation ordering it to produce a statement. Failure to comply with an injunction is contempt of court, for which the sanction is an unlimited fine. In addition, as the public becomes increasing aware of the existence of these statements, failure to produce a statement in any year is likely to adversely impact on an organisation's reputation, with possible adverse inferences being drawn.

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