

## UK Modern Slavery & Human Trafficking FAQs

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<https://youtu.be/o3dZN9BXmL8>

### What's it all about?

In late March 2015 UK legislation was passed aimed at combatting slavery and human trafficking in the form of the [Modern Slavery Act 2015](#) ("the Act"). The Act includes a specific compliance obligation which has been in force since 29 October 2015. Around the same time the UK government also published guidance about the compliance obligation called "[Transparency in Supply Chains etc. A practical guide](#)" ("the Guidance") - the UK legislation takes its inspiration from similar Californian modern slavery legislation for which official (useful) guidance also exists (that can be found [here](#)).

Ensuring that those businesses affected by this obligation introduce and maintain robust anti-slavery and human trafficking compliance practice, procedures and policies is crucial, especially as concerns reputation. As this is a new area for businesses, plenty of work needs to be done both to set this up, and, also, for the future as the compliance obligation will continue annually. To help understand the basics and give some pointers for the more detailed work Cordery has developed this set of handy and straightforward FAQs.

### What are the rules?

The Act consolidates and expands upon existing legislation and also sets up a systematic approach to combatting modern slavery and human trafficking. Key aspects include the following:

- Main Offences - these are slavery, servitude and forced or compulsory labour, and, human trafficking, which are closely related but not legally identical (for more on this see below);
- Penalties - for the main offences the penalties include: maximum life imprisonment (conviction on indictment), or, twelve years imprisonment or a fine or both (summary conviction); confiscation of assets; and, slavery and trafficking reparation orders (compensation to the victims);
- Anti-Slavery Enforcer - the new position of an independent Anti-Slavery Commissioner has been established who is tasked with a number of functions including encouraging practice in the prevention, detection, investigation and prosecution of slavery and human trafficking;
- Jurisdiction - the Act and the business transparency requirements are not restricted to UK entities as they will apply to any business wherever formed which falls under the scope of the Act (see later below); and,
- Business Transparency & Disclosure - under [Section 54 of the Act](#) ("the disclosure and transparency provision") businesses of a certain size will have to annually disclose in a so-called "*Slavery and Human Trafficking Statement*" the steps that they've taken to ensure that there is no slavery or human trafficking in their business or supply chains.

### What exactly are slavery, servitude, forced labour, and human trafficking?

In terms of legal definitions the following apply:

- Slavery - in this situation ownership is exercised over a person;
- Servitude - this involves the obligation to provide services imposed by coercion;
- Forced Labour - this involves work or service exacted from a person under the threat of a penalty and for which the person has not offered themselves voluntarily; and,
- Human Trafficking - this concerns arranging or facilitating the travel of another person with a view to

exploiting them which covers a range of activities such as sexual exploitation, the removal of organs, and, securing services from children and vulnerable persons.

In these FAQs the term slavery is used to encompass slavery, servitude and forced labour together.

### **How can modern slavery be identified?**

As the Guidance itself acknowledges, identifying potential victims of modern slavery can be a challenge because slavery can manifest itself in many different ways and it is not always clear at what point issues like poor working practices and lack of health and safety feed into slavery in a work environment. There will also be cases of exploitation which, whilst constituting poor labour conditions, do not nevertheless constitute modern slavery, for example, someone may choose to work for less than the national minimum wage, or in undesirable or unsafe conditions, perhaps for long work hours, without being forced or deceived, and these practices may not amount to modern slavery in particular if the employee can leave freely and easily without threat to themselves or their family. Also, standards may significantly differ between countries as to what constitutes slavery, or, child labour.

The UK Home Office provides some assistance in spotting some of the typical visual signs of modern slavery which can be found [here](#) and [here](#). Training from someone with the proper expertise can also help identify tell-tale modern slavery signs.

### **To whom do the transparency and disclosure requirements apply?**

Under [secondary UK legislation](#) (in force from 29 October 2015) a business whose annual turnover is UK £36 million or more will be required to make a “*Slavery and Human Trafficking Statement*”. The Guidance clarifies the overall picture by saying that the statement requirement applies to an organisation in any part of a group structure where:

- It is a body corporate or partnership (wherever incorporated);
- It carries on a business, or part of the business, in the UK (for more on this see below);
- It supplies goods or services; and,
- It has an annual turnover of at least UK £36 million (for more on this see below).

All industry sectors are therefore covered.

### **How is turnover calculated?**

In terms of working out whether the UK £36 million turnover threshold is met, turnover means the amount derived from the provision of goods and services after deducting:

- Trade discounts;
- Value added tax;
- Any other relevant taxes.

Total turnover is calculated as:

- The turnover of the organisation in question; and,
- The turnover of any of its subsidiary undertakings, including those operating wholly outside the UK.

### **What does carrying on a business in the UK mean?**

For the purposes of deciding if a business meets the transparency and disclosure requirements, determining whether an organisation “carries on a business” in the UK has to be done on a case-by-case basis. On this issue the Guidance states:

“Applying a common sense approach will mean that organisations that do not have a demonstrable business

presence in the [UK] will not be caught by the provision. Likewise, having a UK subsidiary will not, in itself, mean that a parent company is carrying on a business in the UK, since a subsidiary may act completely independently of its parent or other group companies.”

The Guidance also highlights certain particular issues concerning the following areas:

- Charitable and educational organisations - these organisations will be subject to the disclosure and transparency requirements if they engage in commercial activities and have a total turnover of UK £36 million, irrespective of the purpose for which profits are made, i.e it doesn't matter if they pursue primarily charitable or educational aims or purely public functions; and,
- Franchises - when determining whether a franchiser will be caught by the turnover threshold, in calculating the threshold the turnover of the franchiser only is taken into account, i.e not the turnover of any franchisee using the franchiser's trademark and distributing goods or providing services. However, franchisers who meet the turnover threshold may wish to consider the impact on their brand of the activities of franchisees in relation to modern slavery and report on the steps taken to ensure the franchise as a whole is free from modern slavery.

### **When do businesses have to report?**

When to report is not so straightforward an issue - what is set out in this section should be read with care. Although the legal obligation to publish the “*Slavery and Human Trafficking Statement*” came into force on 29 October 2015, because many businesses are not realistically in a position to publish the statement now, a transitional period has been allowed. Under [secondary UK legislation](#) (of 22 October 2015) the statement does not have effect in respect of a financial year ending before 31 March 2016. According to the Guidance this means as follows:

- Businesses with a financial year-end date between 29 October 2015 and 30 March 2016 will not be required to publish a statement for the financial year of the organisation preceding the date of their financial year-end date in the 29 October 2015-30 March 2016 period - instead a different period will apply (see example 1 below); and,
- Businesses with a financial year-end of 31 March 2016 will be the first businesses required to publish a statement for their 2015-16 financial year (see example 2 below). These organisations will be required to produce a statement covering the full financial year of the organisation, but, where an organisation has only recently undertaken activities they may produce a statement that indicates that activity undertaken covers a particular part of the financial year.

The Guidance also states that businesses should publish their statement as close as possible to their financial year-end, but, they will have 6 months from their financial year-end by when to publish the statement (see the examples below).

The Guidance gives some examples (to which the above-mentioned 6-month publication period has been added here) as follows:

- Example 1 - Business “X” has a financial year-end of 30 November 2015. The statement publication obligation does not take effect in relation to financial years ending before 31 March 2016. Business “X”, therefore, does not need to complete a statement for the financial year-end 30 November 2015. Instead, business “X's” first statement will need to be produced for the financial year 1 December 2015 to 30 November 2016, which it would have to publish by 31 May 2017 at the latest;
- Example 2 - Business “W” has a financial year end of 31 March 2016 and so is required to produce a statement for the current financial year. Business “W” has undertaken a number of activities throughout the financial year relating to tackling modern slavery, including activity prior to the commencement of the disclosure and transparency provision. Their statement should cover all the relevant activities undertaken by the organisation during the period 1 April 2015 to 31 March 2016, which it would have to publish by 30 September 2016 at the latest; and,
- Example 3 - Business “X” has a financial year-end of 30 April 2016 and so is required to produce a statement for the current financial year. Business “X” has only started to undertake activities related to

steps taken to tackle modern slavery since the commencement of the disclosure and transparency provision. Business “X’s” statement covers the financial year from 1 May 2015 to 30 April 2016 but only details the activity undertaken since the provision commenced in October 2015, which it would have to publish by 31 October 2016 at the latest.

### **Does a business have an obligation to ensure that there is no slavery at all?**

The Guidance states that the compliance requirement does not mean that a business must guarantee that the entire supply chain is slavery free. Instead, businesses should be transparent about the steps that they have taken to ensure that modern slavery is not occurring.

Technically-speaking the reporting requirement is a minimum requirement. Therefore, if businesses wish, they can take further measures and indeed the Guidance not only encourages businesses to do more (which would be going beyond the prescribed compliance requirements) but it also expects businesses to build on their reporting annually.

### **What should the Slavery and Human Trafficking Statement look like?**

There is no prescribed form for the “*Slavery and Human Trafficking Statement*”. Therefore, it is at the discretion of businesses themselves to determine both the presentation and level of detail of information they wish provide. Necessarily, the information in the statement will be determined by the sector of the business as well as the complexity of its structure and supply chains or the particular sectors and countries its suppliers are located in.

The Guidance does however say that a statement should be:

- Written in simple, easy to understand language;
- Written in English, but it may also be made in other languages as relevant to the organisation's business and supply chains;
- Succinct whilst covering all the relevant points and provide appropriate links to relevant publications, documents or policies of the organisation;
- True and refer to actual steps undertaken or started; and,
- Specify actions taken on a country-by-country basis (where relevant) to help investors, consumers and the public understand the context of any actions or steps taken to minimise risks.

As the Guidance itself says, to create a statement it is not necessary to start from scratch. If a business already has in place corporate social responsibility or ethical trade activities, procedures or policies in place, which address the issue of modern slavery to a degree and which may have already been disclosed, these can be used and built upon. Also, links may be provided by a business to publicly available documents or policies published on their websites to support their statements.

As a practical suggestion, a business should aim to try and get the whole statement into two to three sides of A4 maximum.

### **What does the Slavery and Human Trafficking Statement include?**

The Act states that the “*Slavery and Human Trafficking Statement*” may include the following six elements, for which some suggestions have been made including some from the Guidance:

- The organisation’s structure, its business and its supply chains - describing the business and its supply chains should be a relatively straightforward exercise for some businesses (to include for example the sector, countries operated in, business operating model etc) but for others this may be more challenging, for example, where there are a significant number of suppliers, or, where a certain tax structure applies;
- The organisation’s policies in relation to slavery and human trafficking - a policy can be either incorporated into existing policies, which it may dovetail with for example concerning human rights disclosure issues, or, it could be stand-alone. If stand-alone it could include the following: explaining what modern slavery is and why it is relevant in compliance terms; setting out responsibilities; explaining the possible areas of risk;

explaining what the “Slavery and Human Trafficking Statement” is; explaining the policy as regards supply chains, and, recruitment; identifying how to spot slavery; setting out a reporting/whistleblowing procedure; if appropriate, setting out possible remedies/compensation; and, stating what training and awareness-raising is provided;

- The organisation’s due diligence processes in relation to slavery and human trafficking in its business and supply chains - this could include the following: specific checks to undertake (how, on who including ownership etc); monitoring and evaluation measures to undertake; impact assessments to undertake; plans to address actual instances of modern slavery should they occur; grievance mechanisms; and, auditing to undertake, which must be specially developed and consideration given as to whether to outsource it or not; due diligence procedures should also be based on: the proportionality of the slavery risk; the severity of the slavery risk; the level of influence that a business may have; and, any broader risk assessments that may have been conducted;
- The parts of the organisation’s business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps the organisation has taken to assess and manage that risk - this could include the following: assessing country risk, sector risk, employment risk, and, relationship/business partnership risk; developing a two-stage process to assess existing suppliers, first to categorise the risk level (which may not necessarily fall on mainstream suppliers), and, second to do an in-depth assessment which includes a supplier questionnaire; assess new suppliers against their anti-slavery processes; and, assess recruitment agents by for example doing background checks and investigating reputation;
- The organisation’s effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such (key) performance indicators as the organisation considers appropriate - KPIs could be developed in two ways: either, existing KPIs could be used to explain whether they make the business and its supply chains vulnerable to modern slavery; or, new specific KPIs could be introduced to measure the performance of any anti-slavery actions undertaken for example by listing the percentage and number of suppliers actively engaged on anti-slavery compliance; and,
- The training about slavery and human trafficking available to the organisation’s staff - organisations should ensure that all employees are aware of, and understand the practical implications of, the relevant modern slavery policies and procedures, which may be achieved by effective communication (tone from the top) and training. Anti-slavery training should be an easier sell as it is an issue that can motivate people. The training should be tailored to different groups of employees, for example the areas of focus and level of detail included in training the board of directors and training the procurement and HR departments are likely to be different (“sheep-dip” training must be avoided). Among other things, organisations should train employees to identify the signs of modern slavery and flag up potential issues - employees should also be informed of the Modern Slavery Helpline on 0800 0121 700 so that they may call for further information and guidance where they think they have uncovered an instance of modern slavery. Training should also be documented, especially as it might need to be produced for regulatory purposes. Communication should also make success stories widely known.

In the alternative, compliance with the Act can still be achieved by publishing a “*Slavery and Human Trafficking Statement*” which simply states that the organisation has not taken any steps to ensure that slavery and human trafficking are not taking place in the business or its supply chains.

### **What has to be done with the Slavery and Human Trafficking Statement?**

If the business has a website it must publish the “*Slavery and Human Trafficking Statement*” on that website, and, include a link to the statement in a prominent place on the website’s homepage. If the organisation doesn’t have a website, it must provide a copy of the statement to anyone who makes a written request for it within 30 days.

According to the Guidance, where there is a complex organisational structure, an organisation may have more than one outward-facing website. For organisations where there is more than one website the Guidance recommends placing the statement on the most appropriate website relating to the organisation’s business in the UK. Where there is more than one relevant website the Guidance recommends placing a copy of the statement or a link to the statement on each relevant website.

As regards the requirement that the link must be in a prominent place on the home page itself, according to the

Guidance, a prominent place may mean a modern slavery link that is directly visible on the home page or part of an obvious drop-down menu on that page. The link should be clearly marked, for example “Modern Slavery Act Transparency Statement”, so that the contents are apparent.

It would be advisable to get the marketing team on board as they may have some reservations about the publication requirement.

### **Who has to approve the Slavery and Human Trafficking Statement?**

The “*Slavery and Human Trafficking Statement*” must be approved and signed by either a director, member or partner of the business - this depends on the type of organisation as follows:

- For a body corporate (other than a limited liability partnership), the statement must be approved by the board of directors and signed by a director (or equivalent);
- Where the organisation is a limited liability partnership it must be approved by the members and signed by a designated member;
- For a limited partnership, registered under the Limited Partnerships Act 1907, a general partner must sign it; and,
- If the organisation is any other kind of partnership, a partner must sign it.

### **Can I produce just one Slavery and Human Trafficking Statement?**

The Guidance states that each parent and subsidiary organisation (whether UK-based or not) that meets the disclosure and transparency requirements must produce a “*Slavery and Human Trafficking Statement*”. But if a foreign subsidiary is part of the parent company’s supply chain or own business, the parent company’s statement should cover any actions taken in relation to that subsidiary to prevent modern slavery. Where a foreign parent is carrying on a business or part of a business in the UK it will be required to produce a statement. The Guidance recommends that, either, non-UK subsidiaries are covered in a parent company statement, or, non-UK subsidiaries should be asked (by their parent company) to produce a statement themselves (if they are not legally required to do so already). This approach is recommended in particular where the non-UK subsidiary is in a high-risk industry or location.

### **Will the Anti-Slavery Commissioner be involved in any of this, and, if so, how?**

The Commissioner has stated in his [Strategic Plan for 2015-2017](#) that as regards ensuring supply chains are not tainted by slavery he will:

- Work with trade bodies and businesses to identify, promote and encourage best practice in ethical labour practices and supply chain transparency;
- Promote understanding of the disclosure and transparency provision and encourage best practice in policy responses and reporting;
- Develop targeted initiatives with particular sectors where slavery is likely to be prevalent; and,
- Partner with the airline sector and other transport networks to promote awareness.

In addition, he will also work with partners to engage with the financial sector to encourage development of initiatives and tools to tackle the unwitting facilitation of modern slavery crime.

### **What about enforcement for non-compliance?**

Where in a given financial year a business fails to comply the Secretary of State can seek an injunction through the High Court requiring the business to comply. Failure to comply with the injunction will likely constitute contempt of court and be subject to an unlimited fine.

A business will be considered to have failed to comply if it has neither:

- Produced a statement; nor,
- Published the statement on its website (if it has one); nor,
- Set out the steps it has taken in the relevant financial year.

The official legal penalty is admittedly not a strong one. But, this is not to say that this will not change in the future - it will take some time for modern slavery compliance to bed down. A far more serious consequence for now for non-compliance, whether real or perceived, will be reputational damage. Further, consumers might stop buying a business's products or services, and, investors might pull out or seek to not invest in a business.

There is also the possibility of private action such as the risk of litigation, and although the scope of this is as yet undetermined in the UK, recent cases in the US such as the class-action Barber-v- Nestlé case which involved the California Supply Chains Act (that inspired the UK Modern Slavery Act), demonstrate that this area can be the subject of litigation (although in this instance the matter was eventually dismissed by the judge).

### **Do I need to help my suppliers?**

It is probably a good idea to engage with suppliers collectively as this may save costs.

Generally-speaking, organisations could benefit from working collaboratively with others, for example industry bodies and multi-stakeholder organisations, in order to improve industry-wide labour standards and to advocate for improved laws and policies in sourcing countries, where appropriate.

### **How are instances of slavery and human trafficking to be dealt with?**

The Guidance states that any incidence of modern slavery should be dealt with appropriately and relevant remedies made available to potential victims - strictly-speaking this is not part of the compliance obligation under the Act.

The Guidance states that if modern slavery is identified or suspected abroad, then the response should be tailored to the local circumstances. In some cases the most appropriate response will be to engage with local NGOs, industry bodies, trade unions or other support organisations to attempt to remedy the situation - the Guidance states (perhaps rather oddly) that in other cases, it will be more appropriate to contact local Government and law enforcement bodies.

If the local response seems inadequate and the local company seems unable to address coercion, threat, abuse and exploitation of workers, then, according to the Guidance, the organisation should seek to give that company more support, guidance and incentives to tackle the issue. This could include working with at-risk suppliers to provide training, messages and business incentives or guidance to implement anti-slavery policies. If, after receiving support, the supplier is not taking the issue seriously, the organisation ultimately could reconsider their commercial relationship with that supplier. These actions could then be included in the next "*Slavery and Human Trafficking Statement*".

### **What can my business do by way of compliance?**

We recommend the following ten actions:

- Create a modern slavery checklist, including determining a budget;
- Task internal responsibility for anti-slavery compliance, including at the top;
- Determine when you will have to publish a "*Slavery and Human Trafficking Statement*";
- Undertake a business and supply chain audit to determine slavery risk as regards locations and vendors and follow this up by doing the relevant due diligence;
- Develop a "*Slavery and Human Trafficking Statement*" and assign sign-off responsibility for it;
- Develop a crisis management plan in case an instance of slavery occurs, including remediation such as compensation and apologies;
- Incorporate anti-slavery compliance into other policies and procedures such as codes of conduct,



- procurement procedures etc;
- Introduce/check anti-slavery clauses in contracts with suppliers;
  - Undertake training of both business personnel and supply chains, and, develop an anti-slavery communications and advocacy strategy; and,
  - Set up whistleblowing mechanisms for raising and reporting slavery concerns.

## How Cordery can help

These FAQs have been designed to highlight issues rather than provide comprehensive advice. Cordery can provide advice on the Modern Slavery Act and the accompanying Guidance. Cordery also provides various service and product solutions, the details of which can be found [here](#), including an enhanced due diligence service, the details of which can be found [here](#). We also frequently write about modern slavery issues, which can be found here and we have produced videos which can be found [here](#) and [here](#).

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