

Client Alert: Modern Slavery Act & Consultation

April 24, 2015

What is this all about?

The UK now has new legislation aimed at combatting slavery and human trafficking in the form of the Modern Slavery Act 2015 (“the Act”), which received Royal Assent on 26 March 2015.

The Act consolidates and expands upon existing legislation and also sets up a systematic approach to combatting modern slavery. The Act also imposes transparency compliance requirements in supply chains on businesses, which the UK Government is currently consulting on.

What does the Act consist of?

The key aspects of the Act include the following:

- **Main Offences** - the key offences are: slavery, servitude and forced or compulsory labour, and, human trafficking. These offences are closely related but not legally identical. Slavery is where ownership is exercised over a person. Servitude involves the obligation to provide services imposed by coercion. Forced or compulsory labour involves work or service exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily. Human trafficking concerns arranging or facilitating the travel of another person with a view to exploiting them;
- **Penalties & Enforcement** - for the main offences the penalties are: maximum life imprisonment (conviction on indictment), or, twelve years imprisonment or a fine or both (summary conviction); confiscation of assets; slavery and trafficking reparation orders (compensation to the victims); slavery and trafficking preventative orders (where there is a risk of future offences); and, foreign travel bans;
- **Anti-Slavery Enforcer** - the new position of an independent Anti-Slavery Commissioner has been established. The Commissioner is tasked with a number of functions including

encouragement of practice in the prevention, detection, investigation and prosecution of slavery and human trafficking;

- Protection for Victims - victims of slavery will be better protected and supported including child victims. For example, slavery or trafficking victims will be able to use as a defence against certain offences that they were coerced into committing that the offence in question is attributable to their slavery or exploitation situation;
- Business Transparency & Disclosure - 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 (see below for more on this); and,
- 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.

Which businesses does transparency apply to and what must they do?

Article 54 of the Act sets out in its entirety the transparency in supply chains requirements. The two main issues here for businesses concern turnover, and, the “*slavery and human trafficking statement*”.

Turnover

Transparency applies widely in that it concerns any “*commercial organisation*” supplying goods or services and which has a certain turnover, carrying on a business, or part of a business in any part of the UK - transparency therefore has extra-territorial scope.

The turnover threshold will be prescribed in further (secondary) legislation and the Home Office (the Government department responsible for this legislation) is currently in consultation about the turnover size threshold.

The consultation document gives an indication of the estimated number of businesses that might be required to comply under a range of proposed thresholds as set out below:

<i>Turnover thresholds</i>	<i>Estimated total number of UK active companies whose turnovers exceed the threshold**</i>
£36 million*	12,259
£250 million	2,554
£500 million	1,409
£1 billion	724

These numbers are approximate as they do *not* include businesses registered in other countries and operating directly in the UK, without a UK registered subsidiary.

*£36 million is one of the thresholds which determine the size of a large company for the purposes of the (UK) Companies Act 2006.

** Where more than one company within a group exceeds the thresholds, this number includes all such companies.

It should be stressed that these figures have only been provided in the consultation document as a frame of reference and are not intended to limit feedback in the consultation to what interested parties think the final turnover threshold should eventually be.

The consultation document does make it clear however that total turnover will be the total net turnover of the “*commercial organisation*”, i.e. the total amount of revenue derived from all sources, after deduction of discounts, VAT and any other taxes based on the amounts so derived. This is in effect the same definition as the one used in the (UK) Companies Act 2006 for businesses to determine their size for the purposes of complying with that particular legislation.

The turnover threshold of a company carrying on all or part of its business in the UK will be assessed as including the turnover of all of its subsidiaries.

Slavery and Human Trafficking Statement

Businesses with a certain turnover will also be required to publish an annual “*slavery and human trafficking statement*” which must disclose the steps that businesses have taken to ensure that their business and supply chains are slavery-free, or, the business must provide a statement that no such steps have been taken - the latter course of action carries an obvious reputational risk.

The Home Office is also currently in consultation on future statutory guidance that the UK Government will provide on the content of “*slavery and human trafficking statements*”. A number of issues could eventually come out of this, for example whether the board itself will have to sign off.

These statements must be meaningful and the Act states that the statement may include the following:

- The organisation’s structure, its business and its supply chains;
- The organisation’s policies in relation to slavery and human trafficking;
- The organisation’s due diligence processes in relation to slavery and human trafficking in its business and supply chains;
- 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;
- The organisation’s effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as the organisation considers appropriate; and,
- The training about slavery and human trafficking available to the organisation’s staff.

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.

What’s next?

The UK Government consultation consists of 18 brief questions, which focus on determining the disclosure turnover threshold, and, the disclosure activities content and good practice of “*slavery and human trafficking statements*”, along with requests to provide information about those submitting responses in order to be able to assess the consistency of views submitted.

The consultation will close on 7 May 2015 and a response to the consultation will be published - it is not clear at this stage if there will be some kind of hearing concerning the consultation. The supply chains transparency obligation is provisionally planned to come into force in October 2015.

Input into the Act highlighted the vulnerability of UK supply chains to slavery infiltration. Businesses should set up a compliance programme to deal with this. As at the time of writing this article, businesses will only have 6 months to prepare before the transparency in supply chains requirements fully apply, which is not much time and especially so because the turnover threshold and full content extent of the *“slavery and human trafficking statement”* are still unknown.

What can be done?

For those businesses who are likely to be affected by the supply chain requirements of the Act we suggest that they consider the following as compliance priorities:

1. Undertake a supply chain audit in order to hold the supply chain to account, and, identify jurisdictions and types of vendors who present the most risk - ensure that the board and shareholders support all of this;
2. Develop a *“slavery and human trafficking statement”* template, and, a communication strategy for delivering the annual statement - it is not only the UK Government who will need convincing but maybe also potential pressure group activists targeting the business;
3. Train employees and the supply chain - people are the weakest link, and, they need to buy in to the compliance programme, so adopt an appropriate approach, for example an ethical one that emphasises the respect for human dignity;
4. Update and integrate modern slavery compliance into the businesses’ other practice, procedures (including procurement), policies and documentation, including the requirements (since 2013) for quoted companies to report in their annual strategic report on human rights *“where this is relevant for an understanding of the business”*; and,
5. Work with or create alliances to try and deliver improvement across the board and which is not limited to the businesses’ own activities, and, to create leadership - combined efforts can better bring about change and improve transparency.

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