

UK Modern Slavery Act: Public Shame In The Supply Chain

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From early 2016, all suppliers of goods and services in the U.K. with a global turnover above \$45 million (36 million pounds) will be required to publish an annual statement on their actions to ensure that there is no slavery or human trafficking in their business or supply chains. What lies behind this requirement and how can companies best comply?

Context

It is estimated that there are over 35 million people in slavery ("ownership exercised over a person") around the globe. While addressing such issues has traditionally been the responsibility of governments, increasing attention is being given to the role of corporate actors. In 2011, the UN endorsed the Guiding Principles on Business and Human Rights, establishing a first global standard for addressing the risks to human rights from business activity.



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Governments (some more than others) are working to put these principles into practice and encouraging companies to recognize that promoting human rights is good for business by:

- protecting and enhancing a company's reputation, brand and customer base, as consumers seek out companies with higher ethical standards;
- reducing risks of labor disputes and of litigation for human rights abuse;
- appealing to investors, who increasingly take ethical factors into account in their investment decisions; and
- reinforcing the long-term foundations of sustainable global economic growth.

California took an early lead with the Transparency in Supply Chains Act (2010). This requires retailers and manufacturers doing business in the State of California and with over \$100 million in annual gross receipts to report on their efforts to eliminate slavery and human trafficking from their supply chains. The information helps consumers to choose not to patronize companies that are not socially-responsible and to level the playing field for socially-responsible companies competing against those with lower costs due to lower standards. The media and human rights activists assist this process by naming and shaming companies with no or weak policies.

Although the timing remains unclear, California's example is likely to be followed elsewhere in the U.S.

The mandatory due diligence requirements under the new U.S. Federal Acquisition Regulation rule are already prompting more companies to address these issues.

Across the Atlantic, the EU is taking similar steps. In 2014, it adopted a directive on the disclosure of nonfinancial and diversity information. This will require some large companies (expected to be about 6,000 across the EU) to publish information on their policies on issues including the environment, treatment of employees, respect for human rights, anti-corruption and diversity in their board of directors. EU member states have until December 2016 to transpose the directive into national legislation.

Against this background — and with the intention of helping U.K. companies to prepare for the implementation of the EU directive — the U.K. has adopted the Modern Slavery Act. Modeled closely on the California legislation, the act's transparency requirements raise the bar by covering a wider range of businesses, not limited to U.K. entities.

Timing

Regulations to bring the transparency requirements into force are due to be debated in Parliament before the end of October. Once adopted, the government intends to publish statutory guidance at the same time. The guidance will include details on transitional provisions. These are yet to be finalized but are likely to provide that the first businesses required to publish a statement are those whose financial year ends in March or April 2016. (So those with a year-end in February would not need to publish their first statement until February 2017.)

Applicability

The transparency requirement will apply to all corporate bodies wherever incorporated and to all partnerships wherever formed which:

- supply goods or services; and
- carry on a business or part of a business in any part of the U.K.; and
- have a global annual turnover of or above \$45 million (36 million pounds).

This is modeled on the U.K. Bribery Act 2010, whose guidance is also likely to provide a model for the application of the Modern Slavery Act. This would mean that, while the courts will be the final arbiter as to whether an organization "carries on a business" in the U.K. taking into account the particular facts in individual cases, the government expects that the question will be answered by applying a common sense approach. An organization will be caught if it engages in commercial activities, irrespective of the purpose for which profits are made. Organizations that do not have a demonstrable business presence in the U.K. would not be caught: being listed on the London Stock Exchange or having a U.K. subsidiary would not, in itself, qualify a company.

Requirement

The act requires that businesses to which it applies must publish on their website, for each financial year, a statement setting out the steps they have taken to ensure that slavery and human trafficking is not taking place in any of their supply chains and in any part of their own business. It is not specified whether the statement should stand alone or be part of a wider report, but there must be a prominent

link to the statement itself on the website's home page.

Failing to take any steps to prevent slavery or human trafficking is not in itself an offense. But, as in California, the expectation is that the reputational risks of doing nothing will translate into effective pressure on companies, from the public, consumers and investors, not only to comply but to use the annual statements as an integral part of their branding as socially-responsible organizations.

Annual Statements

The act provides only indications, not definitive requirements, of the possible content of the statements, as follows:

- the organization'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 about slavery and human trafficking available to its staff.

The statutory guidance is likely to clarify when and where a statement should be published and to offer suggestions on how modern slavery may be identified (with case studies of due diligence processes) and how to improve the training and awareness of staff and supply chains.

But the U.K. Government's approach is clearly to avoid setting minimum standards or to be prescriptive. It is recognized that the circumstances of individual businesses vary widely depending on their potential exposure to modern slavery: a services company with no supply chain outside the U.K. will have a very different risk profile to, for example, a retailer with suppliers across the world. So the guidance is unlikely to dictate the type of activities or policies that businesses should undertake and it will be left to their judgment to determine what they consider to be reasonable and proportionate. By avoiding a minimal "tick box" exercise, the aim is to encourage an iterative process that drives up standards over time, as companies study what their competitors do and seek to go further.

How Companies Can Prepare

Those familiar with the California requirements, and others with a developed human rights policy, may already publish reports on their action to counter modern slavery and need take no new action beyond verifying that their processes comply with the details of the new requirement. But all others, including the many companies with minimal exposure to the risk of modern slavery, should consider what they may need to do. The following offers some pointers:

- **Applicability:** clarify if the requirement applies to you or any other entities in your corporate group;

- **Responsibility:** nominate a suitable individual to oversee compliance;

- **Risk assessment:** conduct an audit of your business and supply chains so that resources are focused in the highest risk areas (the Global Slavery Index gives an indication of levels of country risk);

- **Policies:** review current policies and due diligence procedures, and develop or revise them as necessary to ensure your business is able to describe with sufficient confidence where it perceives gaps and how it plans to strengthen and supplement steps it already takes. Depending on the nature of the business, policies may include:
 - "supplier principles" providing a clear and consistent framework to ensure that your suppliers meet your standards not only in labor conditions and human rights but also business integrity more generally;
 - developing a qualification system to certify that potential suppliers comply with all applicable laws on slavery and human trafficking before they can bid for or renew contracts;
 - contractually obliging each supplier to have in place effective policies 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;
 - establishing reporting requirements and audit rights, focused on higher risk suppliers. If audits identify shortcomings, suppliers should be required to develop a corrective plan that is then monitored to ensure it is effectively implemented;

- **Training:** develop and provide tailored training for staff, suppliers and agents, in particular those responsible for supply chain management and procurement;

- **Key performance indicators:** identify measures that will help demonstrate progress and that can be set out in the annual statement;

- **Draft statement:** prepare a first draft to help to identify any gaps where early action is required. Within groups, consideration should be given to whether to publish a single combined statement or at least to coordinate separate statements by different entities.

Conclusion

Businesses will increasingly be expected to respect human rights wherever they operate. While government regulation itself may be light, it is designed to engineer pressure from consumers, investors and the media that is intended ultimately to be more effective at driving up standards than the threat of legal enforcement action. Reporting on slavery and human trafficking is likely to be only the beginning of a broader range of nonfinancial reporting requirements subject to similar pressures. Businesses that take the initiative now to integrate human rights issues into their compliance policies stand to gain competitive advantage over those that wait to be pushed.

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