



Guidance on how to comply with the Reporting Requirement

[“Transparency in Supply Chains etc: A Practical Guide”](#) is the new Statutory Guidance on Section 54 of the Modern Slavery Act 2015. Key aspects of this guidance are distilled, explained and explored in this briefing. It can be read together with our [previous briefing](#) which provided details of the key reporting requirements.

The Basic Requirement

For organisations caught by the threshold test, the basic requirement of Section 54 is to produce an annual statement confirming what steps (if any) the organisation has taken in the previous financial year to ensure that slavery and human trafficking is not taking place in any part of its business or in any part of its supply chain. The Act calls it a *“Slavery and Human Trafficking Statement”*. However, the Guidance uses a more attractive phrase *“Modern Slavery Act Transparency Statement”*.

An organisation will be required to produce a statement if it is a body corporate or a partnership, which *“carries on business”* or any part of its business in the UK, which supplies goods or services and has an annual turnover of £36m or more.

Clarification of the threshold test:

- The requirement applies to all organisations, whether companies or partnerships, listed or unlisted, provided the threshold tests are met.
- The Guidance says a common sense approach will be applied in determine if an organisation *“carries on business in the UK”*. It does not matter if that business is charitable, educational, purely public or entirely commercial. If it is engaged in commercial activity it is carrying on business, irrespective of its purpose.
- Whether an organisation carries on business in the UK and whether it supplies goods and services are two separate issues. So presumably an organisation may be caught if it carries on business in the UK even if it supplies its goods and services outside the UK. That said, having a UK subsidiary will not in and of itself mean that a parent company is carrying on part of its business in the UK.

- Turnover means the amount derived from the provision of goods and services anywhere in in the world, including turnover generated by subsidiaries that form part of that organisation’s business, even if operating wholly outside the UK. Turnover is calculated after deduction of trade discounts, VAT and other taxes on the sums derived from the supply of goods or service.

Company groups and subsidiaries

Whether an organisation is subject to the reporting requirements must be assessed on a standalone basis. Each subsidiary of an organisation should be considered individually. However, the turnover of the subsidiary will also have to be accounted for in determining if the parent company is caught (see previous section).

Whilst each organisation may produce its own Modern Slavery Act Transparency Statement, the Guidance states that Group Statements are permitted. Organisations planning on adopting this approach should consider the Guidance on this issue. In particular:

- The statement will nevertheless need to be published on each company’s homepage - so where a subsidiary has a separate homepage it should also be published there.
- Strictly, the Group is only required to report on group companies which are themselves subject to the reporting requirement. However, the Guidance says that it should be *“good practice”* for Groups to report on the activities of subsidiaries which are not caught, particularly if they operate in what (in modern slavery terms) might be considered a *“high-risk”* industry or location.

We suggest that Groups likely to be subject to the reporting requirement should create an organisational structure chart of their companies and partnerships identifying which of them are subject to the reporting requirement (whether in their own right or because the turnover of a subsidiary forming part of their business takes it over the turnover threshold).

Careful consideration may be required in the case of more complex Group structures, for example where active foreign subsidiaries are owned by UK holding companies or where companies are partly owned in a joint venture or profit sharing arrangement. Such complexities may benefit from independent legal advice.

The definition of Modern Slavery

Offences under the Modern Slavery Act are defined in [sections 1 and 2 of the Act](#). [Annex A of the Statutory Guidance](#) provides a useful overview of the offences. Strictly speaking it is these offences which the Act seeks to encourage organisations to take action against. However, the Guidance contains the following broad advice:

“It is not always clear at what point poor working practices and lack of health and safety awareness seep into instances of human trafficking, slavery or forced labour in a work environment... There will be cases of exploitation that, whilst being poor labour conditions, nevertheless do not meet the threshold for 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. Such practices may not amount to modern slavery if the employee can leave freely and easily without threat to themselves or their family. Organisations do still nevertheless have a legal duty to drive out poor labour practices in their business, and a moral duty to influence and incentivise continuous improvements in supply chains.”

The statement: when and where

An annual Modern Slavery Act Transparency Statement must be published in each financial year. The Guidance states *“as soon as reasonably practicable”* after the organisation’s financial year end, preferably within 6 months of that date. Organisations are encouraged to publish their statement at the same time as they publish other annual accounts.

Although the reporting obligation came into force in October 2015, the transitional provisions currently in effect mean that organisations with a financial year-end date on or before 30 March 2016 will not be required to publish a statement covering this financial year. **Organisations with a financial year-end after 31 March 2016 will be the first businesses required to publish a statement. The statement is retrospective** and should therefore cover the organisation’s anti-slavery and human trafficking activities for the 2015/2016 financial year.

Each organisation must ensure that a link to the statement appears in a *“prominent place on its homepage”* and that of any relevant subsidiary (see above). Where a company has more than one website (for example customer-facing, supplier-facing and/or employee-facing) the statement should be published on each of them.

The link to the statement must be clearly visible on the homepage. This means either including a direct link or making it an obvious part of a drop down menu. It should be clearly labelled.

Other policies and practices

Organisations are not expected to create *“Anti-Modern Slavery Policies”* from scratch. If an organisation does decide to create a policy (see box), it should first consider its existing documentation and practices. The Guidance states that it is acceptable to build on existing practices and policies, and companies may find it easy to foster incremental organisational changes through adapting existing policies and practices rather than looking at wholesale revisions or brand new measures. Organisations might consider carrying out internal audits of their own policies to see whether any can appropriately be expanded to cover measures against slavery and human trafficking.

Make an anti-slavery and human trafficking policy

Creating such a policy is not a requirement of the Modern Slavery Act, but could be used as an example of a measure the organisation is taking to combat modern slavery and human trafficking in its organisation and supply chain.

This may be a particularly attractive measure for company groups, enabling them to adopt a common policy. Where appropriate, organisations might look to develop policies collaboratively, for example through an industry body or working with a human rights charity or other relevant institutions.

Organisations should look at their existing policies to see what they can build on.

Content of the statement

There is no standard format, content or declaration that must be included in a Modern Slavery Act Transparency Statement. The Guidance suggests that the statement should be in plain understandable language, *“be succinct but cover all the relevant points”* and should be in English (other languages being optional). Section 54(5) suggests potential content ([see our previous Briefing](#)). Beyond that there is wide flexibility. However, the Annex E of the Guidance provides useful examples of potential content.

In the first year, the statement might explain how existing policies and practices, programmes and management systems already work or are being adapted to prevent modern slavery. Relevant publications, documents and policies of the organisation do not need to be annexed to the annual statement. The statement could provide links to publically available copies of those policies or information about where those policies can be found.

Another measure suggested by the Guidance is supplier compliance audits. These could be optional (e.g. by agreement with suppliers) or compulsory (a contractual measure). These might be announced or organised; could involve a standard audit checklist or focus on particular areas; might be carried out by the business or by an accredited or mutually agreed third party; it might involve checks designed to look below the waterline, for example the right to interview members of the workforce.

Proportionality is key

The Guidance recognises the need for proportionality in the way each organisation chooses to approach this issue. The perceived level of risk that the part of the organisation or its supply chain might conceal slavery or human trafficking should inform the measures an organisation may wish to take, including, for example, the due diligence in carries out on its supply chain.

Suggested next steps

Outside of the reporting obligations, organisations are under no obligation to take further steps against slavery and human trafficking. However, organisations looking to take active steps might consider the following suggestions.

- Creating an organisational structure chart and carrying out a 'threshold audit' to identify group companies subject to the reporting requirement
- Identifying which suppliers will be subject to the reporting requirement
- Undertaking a risk-based analysis to identify group companies or parts of the supply chain which might benefit for further investigation
- Developing an Anti-Slavery Policy or reviewing and revising existing policies
- Asking suppliers sign up to a Policy, or to confirm that they adopt similar practices
- Putting suitable contractual provisions in supply contracts. E.g. a right of audit; a right of termination; obliging suppliers to produce their own report on measures they are taking.
- Calibrating KPIs or pricing levels with suppliers in "high risk" jurisdictions to ensure it does not encourage the conditions for modern slavery (for example by imposing unrealistically low prices or turnaround times)
- Appointing or designating a responsible individual for investigating any reported suspicions of modern slavery or human trafficking and/or as a designated contact person to provide advice and support
- Setting up a support / whistleblowing telephone line / email address (possibly in collaboration with other organisations) to allow people to come forward to report suspected or known offences
- Holding internal / external campaigns to bring the issue to the awareness of the workforce / supply chain

The Guidance states that due diligence procedures should be proportionate to the identified modern slavery risk; the severity of the risk; and the level of influence a business may have to change this. It should be informed by any broader risk assessments that have been conducted. Risk can be assessed in a variety of ways including territorial risks, sectorial risks and transaction-specific risks.

What does this mean for UK organisations?

There is no fine or sanction for failure to produce an annual statement, although in theory an organisation could be issued with an injunction to compel it to make one. Section 54 also explicitly states that an organisation may make a statement that it is doing nothing to combat modern slavery and human trafficking. But that does not mean organisations can afford to ignore this new requirement.

The 'teeth' of this provision is the potential for public censure. However, looked at more positively, the measure presents an opportunity for organisations to publicise good practice and potentially enhance their reputation as an ethical brand. The stated aim of the measure is to create a "race to the top" through increased transparency. The measure allows the public, consumers, employees, investors and the media easy access to a statement, signed-off at top level, about what the organisation is doing to tackle modern slavery and human trafficking. Each organisation should therefore think carefully about how the statement it makes will affect the way it is perceived by interested parties.

For further information please contact:



John Houlden
Partner

+44 (0) 117 902 2796
john.houlden@burges-salmon.com



Lloyd Nail
Associate

+44 (0) 117 307 6827
lloyd.nail@burges-salmon.com

Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400
6 New Street Square, London EC4A 3BF Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7980 4966

www.burges-salmon.com

Burges Salmon LLP is a Limited Liability Partnership registered in England and Wales (LLP number OC307212) and is authorised and regulated by the Solicitors Regulation Authority. A list of members, all of whom are solicitors, may be inspected at our registered office: One Glass Wharf, Bristol BS2 0ZX.

© Burges Salmon LLP 2015. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged. Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting marketing@burges-salmon.com.