



Corporate Law Update

Preparing your Annual Statement on Slavery and Human Trafficking

Introduction

Our recent note highlighted the fact section 54 of the Modern Slavery Act 2015 (the “Act”) requires all commercial organisations operating in the UK with a global turnover above £36 million to publish a slavery and human trafficking statement each financial year. The Act’s purpose is to ensure that businesses take the issue of modern slavery seriously at the highest levels and it consolidates offences relating to trafficking and slavery. For the purposes of the Act, “slavery and human trafficking” includes offences of slavery, servitude and forced/compulsory labour, human trafficking and exploitation, traffic in prostitution offences and trading for exploitation. It marks a further example of the UK government continuing to develop the law governing human rights issues for businesses.

Since this new law came into force on 31st October 2015 the Home Office has published guidance on the matter and the purpose of this note is to provide clarity regarding the steps that the organisations will have to take in order to comply with it.

Who has to publish the statement?

The general rule is that commercial organisations with a global turnover of at least £36 million carrying on business in the UK will need to make the annual statement.

Where a parent and its subsidiaries are required to make a statement, the parent may produce one statement that its subsidiaries may adopt. In this case it should be highlighted that the statement would need to cover the steps taken by the parent and each subsequent business using it. A subsidiary of a UK parent company which is not acting in the UK will not have to comply with section 54. However, it has been indicated by the Government that good practice would be for the parent to ask its non-UK subsidiary to make a statement nevertheless, especially where the subsidiary is operating in a high risk industry or location.

Charities and educational institutions with the appropriate level of turnover should be mindful that they will also need to comply regardless of the purpose for which revenue is generated, provided they are incorporated or a partnership and engage in commercial activity.

Structure and Content

An organisation has two choices: (i) state that no steps have been taken to prevent slavery (potentially damaging to the consumer or public perception of the organisation); or (ii) “ensure that slavery and human trafficking is not taking place in any part of its supply chain.” It should be noted that, under the second option, the organisation is not required to guarantee that its supply chain or business is entirely free from slavery and human trafficking but the organisation should set out all the actions that have been taken in the previous financial year to ensure that it is free from slavery and human trafficking.

The Home Office has stipulated that the statement should be in simple language and succinct in covering relevant publications, documents or policies. The Act does not stipulate any particular form, but topics to consider mentioning include the structure of the organisation, its policies on slavery and human trafficking, the training available to staff relating to these issues or the parts of the business and supply chain that are considered to be at the highest risk of slavery and the actions that have been taken to minimise it.

The statement needs to be approved and signed by an appropriate senior person in the business, for example in a company this must be approved by its board of directors and signed by a director.

Where and when must the statement be published?

If the organisation has a website then the statement must be positioned in a prominent place on the homepage and the Government suggests entitling the document the “Modern Slavery Act – Transparency Statement”. If there is no website the statement has to be made available to anyone who requests it in writing.

Statements will need to be made following a reasonable period after the end of the financial year; the Home Office stipulates that six months is a reasonable period. The first financial year that will be impacted by this legislation will be the financial year ending on 31st March 2016. This means that the first slavery and human trafficking statements will not be due until the end of September 2016.

What are the sanctions for not complying?

In extreme cases of non-compliance the Secretary of State may seek an injunction requiring the organisation to comply, and if there is no compliance with the injunction, it will be in contempt of a court order which is punishable by an unlimited fine. However the main sanction for non-compliance or indeed for stating that no steps have been taken to ensure slavery is not taking place, will be damage to the reputation and goodwill of the organisation’s brand.

What to do now?

It is, at a minimum, 11 months until organisations will need to produce a statement. Nevertheless, prior planning is highly

recommended in order to decide the content of the statement as well as any amendments to procedure and policy which may be necessary to enable the board to approve the statement.

In order to aid the drafting of a statement it would be beneficial for organisations to consider the following issues relating to the suggested topics above:

Organisation structure:

- the complexity of the supply chains;
- the businesses operating model; and
- the relationships which the business has with trade unions and other bodies representing workers.

Policies of the organisation:

- who in the business is responsible for ensuring that the basic standards of labour are met?;
- does the business have a slavery and human trafficking policy?; and
- consider if a policy would be beneficial.

Risk assessment:

- risks include country, sector and transaction risks;
- consider the risk assessment policy, it should be proportionate to the size of the business; and
- consider any action plans that are in place to address risk assessment reports.

Staff training:

- ascertain the most effective method by which to have training;
- identify the most relevant groups in the business and supply chains who require training; and
- consider whether more training is necessary.

The Carson McDowell team can provide guidance on the contents of your organisation's statement, and/or advice regarding the implementation of new business policies and procedures. If you would like further information, please do not hesitate to get in touch with your usual contact at Carson McDowell, or Richard Gray or Neasa Quigley.

Contact



Richard Gray
Partner | Corporate
+44 (0)28 9034 8868
richard.gray@carson-mcdowell.com



Rosie Timoney
Solicitor | Corporate
+44 (0)28 9034 8868
rosie.timoney@carson-mcdowell.com