

SUPPLY CHAIN STATEMENT UPDATE



Overview

In July, we wrote about section 54 of the Modern Slavery Act 2015, which obliges all businesses which have a turnover of over £36m to publish an annual statement stating the steps that they have taken to ensure that slavery and human trafficking are not taking place in their business or their supply chains. Our article can be accessed [HERE](#).

Following the publication of the [implementing legislation](#), [legislation specifying the turnover test](#) and [Home Office guidance](#), we now have greater clarity on how and when a supply chain statement must be published.

Is section 54 now in force?

Yes – it came into force on Thursday 29 October 2015.

What are the tests for determining if a business must publish a supply chain transparency statement?

The test is as follows: Does it have a turnover of over £36m (as described above)? Does it carry on business in the UK? Does it supply goods or services?

Turnover is calculated as the amount derived from the provision of goods and services falling within the ordinary activities of the business itself as well as that of its subsidiary undertakings (as defined in the Companies Act 2006), after deducting trade discounts, VAT and other taxes. See pages 7 and 8 of the guidance for further information.

What are the transitional arrangements for businesses whose financial year ends soon?

Businesses with a financial year ending before 31 March 2016 do not have to make a slavery and human trafficking statement in respect of the current financial year. So, the first supply chain statements will be published by businesses whose current financial year ends on or after 31 March 2016.

How soon after the end of the financial year must the statement be published?

The relevant legislation does not specify a timeframe. However, the Government's guidance encourages

businesses to publish their first statement within six months of the end of their financial year.

Who is responsible for approving and signing the statement?

It must be approved and signed by an appropriate senior person in the business. For corporate entities, the statement should be approved by the board of directors and signed by a director (or equivalent). For LLPs, it should be approved by the members and signed by a designated member (see page 14 of the guidance).

Where must the statement be published?

It should be published on the website of the business, with a link in a prominent place on its homepage. The guidance suggests that the link should be titled: "Modern Slavery Act Transparency Statement" (see page 15).

What does the guidance cover?

The guidance provides advice on a number of topics, including: which businesses must produce a supply chain statement; tips for structuring and writing the statement itself; approving and publishing the statement; responding to an incidence of modern slavery; how this requirement sits alongside other corporate reporting requirements; what information to include in the statement; supplier due diligence; assessing and managing risk, and training.

Is one statement required from each group company, or can a parent company publish one statement on behalf of the whole group?

Each group company must be assessed separately to determine if it must publish a supply chain statement. The same test (as described above) applies to each company.

A parent company may produce one statement that all subsidiaries can use provided that, factually, the statement does accurately describe the steps that each subsidiary has taken to ensure that slavery and human trafficking are not taking place in its supply chain.

If a subsidiary carries on a separate "business" from the parent, then it will require its own supply chain statement.

It could be that the subsidiary has a role in the parent company's supply chain, and should therefore be mentioned in the parent's supply chain statement accordingly.

What about businesses based overseas?

If a business based outside of the UK satisfies the tests described above, then it must produce a supply chain statement. The business does not need to carry on any minimum amount of business in the UK. Conversely, if a UK company with a turnover of over £36m does not actually do any business in the UK, then it is not required by the Act to publish a supply chain statement.

What about overseas subsidiaries of UK businesses?

Again, the same basic test applies to determine if the subsidiary is itself required to publish a supply chain statement. Similarly, if the overseas subsidiary is part of the UK parent's supply chain, then the parent's statement should reflect this. Crucially, under the Act, if an overseas subsidiary of a UK company does not do business in the UK and does not form part of its parent's supply chain,

then there is no requirement for it to publish a statement or to be mentioned in the UK parent's statement.

However, the Government considers it to be good practice for overseas subsidiaries to publish a statement or to be included in the parent's statement, particularly where the subsidiary operates in a high-risk industry or location.

What does "supply chain" mean?

This phrase is not defined in the legislation, and the Government has said in its guidance that it should be

given its "everyday meaning" (see page 5 of the guidance). However, comments elsewhere in the guidance suggest that supplier due diligence should focus on first tier suppliers, but extend to lower tiers where possible. Ultimately, the steps taken by each business should be appropriate and proportionate, taking account of where any risks may lie, given the realities of the relevant industry and where the supply chain activities are taking place.

Must a business state categorically that its supply chain is slavery free?

No. The emphasis should be on the actions taken to find out if there is a risk of slavery in the supply chain, and the steps taken to try and remove that risk. Supply chain transparency is key. In addition, the Government expects businesses to engage in a "race to the top" by improving standards year on year.

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