

## LITIGATION &amp; DISPUTE RESOLUTION (LDR)

# The Modern Slavery Act 2015

By James Cradick

The Modern Slavery Act 2015 (“the Act”) came into force on 29 October 2015.

The Act requires commercial organisations with a turnover of £36 million with a “demonstrable business presence” in the UK which supply goods or services to make an annual public statement as to the actions taken to detect and deal with forced labour and trafficking any where within their supply chains.

The nature of global supply chains often involving sub-contracting and involvement of third parties can make it difficult for businesses to maintain visibility over how goods are produced or supplied. Industries where the supply chain involves significant numbers of low paid unskilled workers are likely to be particularly vulnerable.

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The issue manifests itself in different ways. There is a spectrum of abuse and it is not always clear at what point, for example, poor working practices seep into instances of slavery or forced labour in a work environment. The Government has made clear that businesses have a



responsibility to ensure workers are not exploited, are safe and that relevant employment (include wage and work hour), health and safety and human rights laws and international standards are adhered to, including freedom of movement and communications.

There will be cases of exploitation that, whilst being poor labour conditions, 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 without threat to themselves or their family.

The Act applies to conduct which would constitute an offence if it took place within the UK, even if such conduct is not an offence extraterritorially.

The key part of the Act is Section 54. This provides that a statement must be published (prominently linked via the home page on the organisation’s website) for each financial year setting out the steps taken to ensure compliance. The statement is designed to be read by the public and accordingly should be in succinct, user friendly language.

Section 54 does not stipulate precisely what must be included in the statement but indicates several areas which might be covered. These include the structure of the organisation, business and supply chain; policies in relation to slavery and human trafficking; due diligence undertaken on this issue; reference to parts of the business which may be at higher risk and the steps taken to manage those risks;



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effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains measured against appropriate performance indicators; reference to staff training on the issue.

The guidance to the relevant provisions makes clear that the statement and procedures adopted by the company are to evolve and develop year on year. There is recognition that an organisation at the outset may have only rudimentary procedures in place. The test will be how those procedures are developed and detailed year on year.

The statement is required to be signed off at Board level by a director (for a company), a designated member (for an LLP) or a Partner (in a partnership).

The Act applies to any “body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom”. The Act is not prescriptive as to the scope of “carrying on business”. The Government has indicated a “common sense” approach should be applied as to whether a business has a “demonstrable business presence”.

The Act will apply to any subsidiary

within a group which meets all the relevant criteria for producing a statement. If a global group is also required under the legislation to produce a statement then they may put forward a single statement for all relevant entities in the group which might be affected. In those circumstances the single statement must contain all issues relevant to each subsidiary.

The system is self-regulatory. There are no financial penalties for failing to comply. The Government can enforce compliance through the Courts but reputational damage to a company failing to comply or returning a statement which discloses no action has been taken will be a commercial deterrent.

By virtue of section 11 of the Act there is specific provision for forfeiture of vehicles (and other modes of transport) used or intended to be used in connection with trafficking which will impact on the logistics sector. Forfeiture arises

where the person convicted is the owner or a director, secretary or manager of the company owning the vehicle, or the owner (or director, secretary or manager) of the company in possession of the vehicle under a hire purchase agreement. It will also arise where the person convicted is the driver of the vehicle.

Businesses with a financial year end of March 2016 will be the first required to comply. For businesses with a financial year end from 31 March 2016 onwards the first transparency statement will be due within 6 months of the current financial year end.

If not done so already, steps should be taken now to carry out due diligence, risk assess organisational structures and investigate supply chains to identify risks of forced labour and trafficking. It is necessary to make clear what steps are being taken to deal with risks identified.

Companies not caught directly by the

Act will come under pressure to provide evidence of anti-slavery and anti-trafficking measures from UK purchasers who are required to comply with the legislation. That was fully intended by the Government. By selecting companies with turnover's in excess of £36 million the intention was to target companies with large supply chains and networks which would consequently influence and indirectly materially change how the wider business community within each sector engages with this issue.

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