

## Overview

- Most people think that the Modern Slavery Act 2015 only applies to big companies – and it does, to some extent.
- However, the Act is set to become the most far-reaching piece of legislation of 2016. Why?
- Because, contrary to popular belief, the new obligations that it places on large employers are designed to have a knock-on effect, resulting in most of the UK's 5.4 million SMEs being caught by the legislation in some shape or form.
- Marian Bloodworth, Employment Partner, and Elizabeth Marshall, Senior Associate, at [Kemp Little LLP](#) look behind the new disclosure requirements and explain what SMEs need to know about this new legislation.

## What is the Modern Slavery Act 2015?

- The Act came into force in October 2015, and is aimed at stamping out all forms of slavery and human trafficking in the modern labour market. This is a growing issue, with statistics published by the International Labour Organisation showing that there are now an estimated 21 million victims of modern slavery worldwide.
- The term 'modern slavery' encapsulates a number of specific offences under the Act but in very general terms 'slavery' refers to a situation in which ownership is exercised over a person or where individuals are coerced into providing their services or do so under threat of a penalty and the term 'human trafficking' covers arranging or facilitating the travel of individuals with a view to exploiting them.
- One of the ways that the Act proposes to achieve its aim is by putting pressure on large organisations to report on the steps they are taking to prevent slavery and human trafficking in their business, and in any supply chain of which they are part.
- With the introduction of the Act, the UK has joined three other countries (USA, Brazil and Australia) that are already taking steps to address modern slavery amongst businesses operating in their territories.

## What are the Modern Slavery Act disclosure requirements?

- The new law (specifically s. 54) requires certain commercial organisations to publish a statement annually on their website, signed off by a director (or equivalent) setting out the

steps the organisation is taking to ensure that its business and supply chains are slavery free.

- Even if an organisation is taking no steps to address modern slavery, it must publish that fact.
- Businesses will be required to publish this statement on their website, and a link to the statement must be displayed on the homepage. A copy of the statement must also be provided to anyone who requests one in writing.

## **Which businesses will be affected by the Modern Slavery Act and when must they comply?**

- Businesses will be affected if they:
  - are a commercial organisation, e.g. a business or partnership (whether or not incorporated or formed in the UK) which carries on business or part of its business in the UK (the Act can therefore catch foreign businesses as well as UK businesses),
  - supply goods or services, and
  - have a total annual global turnover of not less than £36 million
- For these purposes, 'turnover' is calculated as the total turnover of the business and of any of its subsidiary undertakings, including those operating outside the UK, after the deduction of trade discounts, VAT and other taxes.
- Affected businesses whose financial year ended on or after 31 March 2016 are now obliged to publish their report for the 2015-16 financial year.
- The government is encouraging publication within six months, i.e. by the end of September 2016. Thereafter, all businesses, including those whose financial year ended before 31 March 2016, will be required to report annually.

## **How will SMEs in the supply chain be affected by the Modern Slavery Act?**

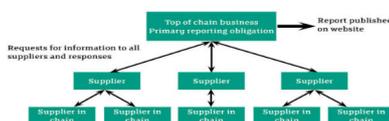
- The government estimates that around 12,260 businesses in the UK will meet the annual turnover threshold and be caught directly by the new disclosure obligations, and will have a primary obligation to report.
- The new requirements don't directly apply to SMEs, in the sense that there are no legal obligations imposed on them. However, many SMEs may well be part of a larger supply chain, acting as suppliers of goods and services to clients with higher turnovers (the end-of-chain businesses) who do have reporting obligations.
- All of the SMEs in the supply chain can therefore expect to be contacted by the end-of-chain businesses and asked to confirm what steps they (and, in turn, their own

suppliers) are taking to address modern slavery.

- They may also be asked, for example, to sign new supply terms that include, as a minimum, an obligation to respond to end-of-chain businesses' requests for information about the steps they have taken, and in addition contractual commitments to avoid modern slavery and trafficking practices, or to require staff to attend regular anti-slavery awareness training.
- Many big businesses have already started the ball rolling – Tesco has reportedly written to each of its suppliers requesting details of the steps they have taken to avoid slavery and human trafficking. In the event that those suppliers fail to co-operate, they may find themselves overlooked when their supply contracts come up for renewal. Again, we can expect to see requests for proposals and tender documents in the future containing requests for details of the steps taken by suppliers.

## How can SME suppliers prepare for Modern Slavery Act information requests?

- In light of this, all SMEs that are part of a larger supply chain will need to begin examining their own business structure in order to answer these requests for information. The diagram below illustrates how the reporting could work in practice.



- SMEs in a supply chain should consider what information they would include in response to a request for information from their end-of-chain client, given that such requests could be received any time now. They should also alert, if applicable, their own suppliers to the need for information from them, and send requests for confirmation to them as appropriate.
- SMEs should also look at any business procedures that they already have in place which make demands on their own suppliers - and which could encourage those suppliers to engage in any form of slavery – examples of such practices might include requiring unethically low-cost products or requiring unreasonably quick turn-around times.
- By way of guidance, any supplier asked to confirm the steps it is taking to address modern slavery should consider:
  - its own structure and supply chain structure to determine the level of exposure
  - any policies or codes of conduct already in place to address the risk of modern slavery and human trafficking, both in terms of it occurring and any policies to encourage staff to speak up about it

- its due diligence processes for selecting suppliers and the questions asked of potential suppliers during the tender or selection process;
- the geographical location of its suppliers – particularly where there is a greater risk that modern slavery could occur, and
- any training that may be required to assist staff in spotting instances of slavery, particularly for directors and employees who have direct responsibility for procurement
- SMEs may be able to simply adapt existing recruitment, procurement and whistleblowing policies to include anti-slavery provisions. However, it is just as important that these policies are communicated to staff.
- Another important aspect to consider is who in the business will be responsible for collating and preparing the necessary information? This job will most likely fall to the HR function in SMEs, where there is often no dedicated reporting function as such. HR managers will need to make sure that they are aware of any incoming requests from end-of-chain clients and respond to them in good time to avoid losing out on potential contracts.

## **Can supply chain members refuse to provide Modern Slavery Act information?**

- Where end-of-chain businesses fail to report, the Secretary of State can seek an injunction forcing them to report. Failure to report in response to the injunction can lead to an unlimited fine for contempt of court. The reputational risk of not reporting is also likely to mean that few if any organisations will allow themselves to be in this position.
- There are no specific obligations on SMEs in a supply chain to report and, as a result, no sanction should they fail to supply any information to their end-of-chain client.
- However, commercial reality means that not responding to a request for information is likely to result in the end of the contractual relationship (or the loss of a potential new one) and, at the very least, reporting obligations being inserted into outsourcing and supplier agreements going forward.
- Unlike the larger organisations SMEs in the supply chain will not have to publish their statements on their website. However, there is nothing to stop them doing so, and in fact there may be a commercial advantage in proactively reporting their own efforts to address modern slavery for all to see.