# POTENTIAL CONFUSION ABOUT MODERN SLAVERY ACT REPORTING REQUIREMENTS

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Legal Briefings – By **Daniel Hudson** and **Oliver Elgie**

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*The Modern Slavery Act 2015* (the MSA), enacted in March 2015 to much fanfare, is potentially landmark legislation due to the vast range of businesses that will be affected by its new slavery and trafficking reporting requirement. It has been estimated that between 12,000 and 17,000 businesses might have to issue annual statements under section 54 of the MSA. Yet early indications hint that there is at least some lack of understanding among organisations of these requirements. That said, the purpose of the MSA is clear and any misunderstanding of the reporting requirements should not prevent a business from first focussing on ensuring that it is taking the appropriate steps to identify and eradicate slavery and human trafficking from its business supply chains.

The requirement in section 54 of the MSA for certain businesses (broadly those with a turnover in excess of £36 million and who carry out business in the UK) to issue annual slavery and human trafficking statements is, in many ways, just another step in a general trend towards increased non-financial reporting by companies.

The MSA sets out very few legal requirements for the annual statements (although there has been some potentially influential case law in California). It simply states that the organisation must:

1. explain, for the financial year in question, the steps that the organisation has taken to ensure that slavery and human trafficking is not taking place in its business or supply chain (or state that no such steps have been taken)

2. be approved by the board and signed by a director, and

3. be accessible via a link that is displayed prominently on the organisation's homepage.

The requirement for board approval has the potential to raise the profile of modern slavery issues to board-level discussions. However, the MSA does not prescribe what the statement must include or what steps must be taken; it simply lists six issuesthat the statement "may" cover.

Although section 54 came into force on 29 October 2015, statements only became compulsory in relation to financial years ending on or after 31 March 2016. However, despite not being under an obligation to do so, by 31 March 2016 almost 100 companies had already published statements. According to research undertaken by Ergon Associates, the number of statements published has now increased to at least 230. Although UK-based companies with turnovers in excess of £36 million account for most of these statements, a significant proportion (31%) have been produced by overseas companies and 8% have been produced by companies with a turnover of less than £36 million.

Although some, or all, of the overseas companies that have reported might consider that they carry on business in the UK (and are therefore within the scope of section 54), it is clear that a number of companies have published statements in circumstance where they were not under an obligation to do so. The number of early adopters and the apparent presence of voluntary reporting may seem an encouraging start for the legislation. However, on closer examination, many of the published statements fail to comply with section 54. For example, of the 230 statements identified, Ergon report that about 40% have not been signed by a director and about a third cannot be accessed via a link easily found on the organisation’s homepage. Although its requirements are limited, at present each of these statements would not be compliant with section 54.

In addition, many of the statements are very high level. About quarter of the statements are under 250 words long, 34% are between 250 and 500, 34% between 500 and 1,000 and only 10% are over 1,000 words. Many of the longer statements were produced by the larger companies and a quarter of the statement over 1,000 words were produced by companies that already have experience of this kind of reporting through the similar Californian Transparency Act. A small minority of the statements touched on all six of the issues set out in section 54, with companies seeming to find it hardest to set out a description of its key risks, how they are being addressed and the key performance indicators against which improvement in this area will be measured.

It should be noted that some of the statements identified do not profess to be anything more than a holding statement. Others read more like anti-slavery policies than statements compliant with section 54. Although these first statements are only supposed to be the first steps on a journey towards the eradication of modern slavery and trafficking, it is not clear whether companies have posted such statements out of good practice whilst they prepare their first transparency statements or they have misunderstood the requirements and purpose of section 54.

It is also not clear whether some of the companies who have posted statements appreciate that they have done so voluntarily. It could be that at least some companies mistakenly believed that they were under an obligation to do so. However, given how few companies posted a statement that was both signed by a director and linked from the homepage, it appears that at least some level of misunderstanding of the MSA's requirements may be involved.

With only about 230 of the potential 17,000 companies having posted statements so far, we cannot read too much into those reports. A far better picture will emerge of how the market, across the various sectors, is interpreting and implementing this reporting obligation once publication of compulsory statements starts to increase. Government guidance encourages compliance within six months after the year-end, so we can expect a flurry of reporting from about September 2016 onwards.

In the meantime, if a business thinks that it is likely to have to produce a statement once its year-end comes around, it should start thinking now about the steps it could or should be taking to understand its business and supply chain, to identify the key risks and to consider how it can take steps to eradicate slavery and human trafficking in its business or supply chain, so that it will have something to report on in due course.

## LEGAL NOTICE



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