

UK GOVERNMENT ISSUES UPDATED GUIDANCE ON MODERN SLAVERY ACT REPORTING

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Legal Briefings - By **Daniel Hudson, Partner and Oliver Elgie, Senior Associate**

On 4 October 2017, the UK Government released [updated guidance](#) on the reporting obligation set out in [section 54 of the Modern Slavery Act](#) (the "**MSA**").

As the MSA itself has not been amended, the updated guidance does not make any changes to the law. Indeed, the updated guidance does not even address, as it could have done, those parts of the MSA that are presently unclear (such as the definition of the term "*carries on business*", "*supply chain*" or "*operations*"). Instead, the updated guidance just purports to drive best practice and to support businesses with tackling modern slavery. This can perhaps be considered a missed opportunity on the Government's part.

The updated guidance:

- encourages organisations with turnovers less than £36m also to produce a Transparency Statement;
- more strongly encourages businesses to include information in relation to all six of the categories set out in section 54(5) of the MSA;
- removes the now superfluous guidance as to when a business will need to produce its first Transparency Statement;
- adds "*best practice*" guidance in relation to approving and publishing Transparency Statements; and
- adds definitions in relation to child labour

In the updated foreword (replacing the previous foreword by the then Home Secretary, Theresa May), the current Home Secretary, Amber Rudd MP, stresses the "*vital role*" of business in the fight against modern slavery and she sets out her belief that "*business must not be knowingly or unknowingly complicit with modern slavery*" or "*be profiting, no matter how indirectly*" from slavery.

Although it is nearly two years since the Government first published guidance in relation to the MSA reporting obligation, the fact that the obligation was not effective until 31 March 2016 means that we are still in the early stages of businesses reporting. In those circumstances, it is perhaps not surprising that this updated guidance does not purport to introduce significant changes.

"SMALLER ORGANISATIONS"

The updated guidance encourages organisations with turnovers of less than £36m to produce a Transparency Statement voluntarily, noting that these smaller organisations might be within the supply chain of a reporting entity and might therefore be asked to provide information to that larger entity in relation to its approach to tackling modern slavery. However, reporting for these entities remains voluntary.

THE CONTENT OF THE STATEMENT

The updated guidance states that a Transparency Statement "*should aim to include information about*" each of the six section 54(5) categories (rather than it "*may*" include such information, as was previously stated). The updated guidance has also removed the passage that stressed that the section 54(5) categories were "*not compulsory*" and that they just "*provide guidance and examples as to the type of information to include*". Given that most, if not all, benchmarking analysis that has been undertaken since section 54 came into force has assessed the extent to which a particular Transparency Statement includes details on each of these six categories, businesses were already under a strong incentive to include information about all six categories. The updated guidance does not materially change that.

APPROVING AND PUBLISHING A STATEMENT

The updated guidance states that it is best practice to include the date that the Transparency Statement was approved by the board and to ensure that the director who signs it is also on the board who provided that approval.

Statements should now be published as soon as "*possible*" after the financial year end, rather than as soon as "*reasonably practicable*", but there is still no hard deadline for publication and the expectation remains that statements should be published within 6 months following the year end. This revision is therefore unlikely to have much effect. A business should also look to maintain a historic record of previous statements online to allow the public to compare statements and monitor progress.

CHILD LABOUR

Finally, the guidance introduces a definition of Child Labour with reference to ILO standards, namely:

- children below 12 years working in any economic activities;
- those aged 12 to 14 engaged in more than light work (as defined by [article 7 of ILO Convention No. 138](#)); and
- all children engaged in the worst forms of child labour (as defined by [article 3 of ILO Convention No. 182](#))..

The MSA does not actually refer directly to child labour as being in itself a form of modern slavery. Indeed, the guidance makes it clear that "*child labour will not always constitute modern slavery*", although "*the worst forms of child labour are very likely to constitute modern slavery*". The key question is whether the child is being exploited. In that regard, the guidance and the MSA acknowledge that children are particularly vulnerable to exploitation.

COMMENT

The MSA and the original guidance left a number of concepts undefined in a manner that has given rise to some confusion. In that regard, the Government has perhaps missed the opportunity to use this updated guidance to help to clarify definitions such as "carries on business", "supply chain" or "operations" that remain undefined in the MSA.

[Business and Human Rights hub](#)

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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