

CLIENT ALERT

UK Home Office Audit of Modern Slavery Act Compliance

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Introduction

The UK Home Office (**'Home Office'**) wrote to organisations last month to ensure effective compliance with reporting requirements under the Modern Slavery Act 2015 (**'MSA'**). The MSA requires organisations within its scope to report on slavery and exploitation risks by producing an annual statement describing the steps they have taken to prevent modern slavery in their businesses and supply chains. The Home Office has said it will seek enforcement action against non-compliant organisations, via the use of High Court injunctions, and is considering publishing a list of non-compliant organisations. However, as a first step, the Home Office will write letters informing organisations of their non-compliance and provide them with the opportunity to demonstrate compliance or exemption from the requirement.

MSA Disclosure Criteria

Organisations are within the scope of the MSA if they:

- are a body corporate or a partnership (wherever incorporated or formed);
- carry on business, or part of their business, in the UK;
- supply goods or services; and
- have an annual turnover of £36 million or more.

If these criteria are met, the MSA requires organisations to publish, on the organisation's UK website every financial year, a statement that is approved by the Board of Directors and signed by a director. This statement must include details of the

UK Home Office Audit of Modern Slavery Act Compliance

steps taken by the organisation to ensure that slavery and human trafficking are not taking place in its operations or supply chains. Organisations must also clearly state if they are not taking any steps to address modern slavery risks.

Application of the MSA Requirements

In practical terms, this requirement applies to organisations that carry on business, or part of their business, in the UK. Overseas organisations with business in the UK could be within the scope of the MSA. The Home Office guidance suggests that a 'common sense approach' should be applied with respect to organisations that have a 'demonstrable business presence in the UK' being caught by the provision. Any organisation in any part of a group structure is legally required to produce a statement if it meets the requirements. However, having a subsidiary that carries on business in the UK does not automatically mean that a parent company itself is carrying on business in the UK if that parent does not have a 'demonstrable business presence'.

Further Developments

The recent focus on reporting obligations by the Home Office follows the January 2019 publication of the second interim report based on an independent review of the MSA covering transparency in supply chains. The review was led by Frank Field MP, Maria Miller MP and Baroness Butler-Sloss GBE. Amongst other things, the report includes the following proposals:

To improve the quality of MSA statements by:

- changing language within the MSA to ensure areas that an organisation's statement should cover are now mandatory rather than suggested; and
- requiring organisations to consider their whole supply chain.

To embed modern slavery reporting into business culture by:

- including a requirement for both listed and non-listed companies to refer to their MSA statement in their annual reports, to be achieved by amending the Companies Act 2006 and section 54 of the MSA;
- requiring businesses to have a named and designated board member who is personally accountable for the production of the MSA statement; and
- making non-compliance with the MSA, and instances of slavery and human trafficking, offences under the Company Directors Disqualification Act 1986.

To monitor and enforce compliance by:

UK Home Office Audit of Modern Slavery Act Compliance

- using legislative provisions to strengthen the government's approach to tackling non-compliance and introducing sanctions; and
- bringing forward proposals to set up an enforcement body to impose sanctions and fines.

The report also suggests that the disclosure requirements under the MSA should be extended to the public sector.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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