



# AN INTRODUCTION TO THE MODERN SLAVERY ACT 2015 FOR ACCOUNTANTS

GUIDE

October 2020

The UK's Modern Slavery Act 2015 came into force in October 2015 and is widely regarded as a pioneering piece of legislation which not only sought to help victims but also for the first time placed an obligation on some commercial organisations to report on what they were doing to prevent modern slavery.

Since then, a spate of prosecutions, adverse publicity and COVID 19 have laid bare the reputational risk and consequential financial risk to any business of not spotting or ignoring the risk of modern slavery within their business. The government has also made it clear that it intends to toughen up some of the requirements contained within the Act. With this mind ICAEW's Business and Management Faculty and Business Law department have prepared a series of guides and webinars to help members navigate the risks.

This guide is an introduction to the Modern Slavery Act 2015. It explains some of the key definitions and requirements that are relevant to ICAEW members and member firms. It is not a definitive guide and it does not constitute legal advice. If in doubt members are advised to seek specialist and independent legal advice.

## 1. WHAT IS THE MODERN SLAVERY ACT 2015?

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

The legislation, inter alia:

- consolidated and simplified existing offences into a single act.
- increased the severity of punishments for modern slavery crimes, including life sentences and a new reparation order to allow the compensation of victims through the confiscation of the perpetrators' assets.
- created an independent anti-slavery commissioner (or Czar) to improve and better coordinate the response to modern slavery including support for victims.
- introduced new protections for victims including a defence for victims of slavery and trafficking and restrictions on individuals to protect people from the harm caused by modern slavery offences.

So it did not create a new offence of 'modern slavery' as slavery was already a crime. More controversially, however, it did introduce a new requirement for commercial organisations to report on what they are doing to combat slavery through a Section 54 'Transparency in Supply Chains' Statement, also known as a Modern Slavery Statement.

## 2. WHAT IS MODERN SLAVERY?

It is easy to assume that everyone knows what slavery is, but the Act gives a precise if wide-ranging definition.

Under the Act modern slavery is defined as existing:

- where 'a person' holds 'another person in slavery or servitude or forcing another person to undertake compulsory labour; and
- where the person knows or ought to know that the other person is being held in slavery or servitude or the person knows or ought to know that the other person is being forced to perform compulsory labour.

This is a very wide definition, but the key is whether there exists an element of coercion. Coercion is not just physical force or the restriction of movement but can involve the retention of identity documents by the employer, payments made to the employer which must be repaid before the employee can leave, retention of wages to pay back such payments and threats to the employee's family. All of these make it very difficult for the employee/worker/victim to leave the employment.

The second part of the definition also means you cannot turn a blind eye to what is going on. In this respect it is very similar to the UK's Bribery Act, although the penalties for breaches are very different.

## 3. WHAT IS HUMAN TRAFFICKING?

The Act defines human trafficking as:

- the acquisition of people by improper means such as force, fraud or deception, with the aim of exploiting them.
- It can be across international borders or within one country. It can include being moved within and between cities, towns and rural locations by force, coercion or deception. A victim can be exploited during the journey and/or at the final destination

Trafficking and slavery frequently go together as many victims are trafficked from their home specifically to work as slaves elsewhere (usually abroad but not always), but they are not mutually exclusive. Often the victim believes or is tricked into believing that they are being taken away to work legitimately and so will willingly allow this to happen. A typical example of this is where a young woman is offered (apparently) a cleaning job in an hotel some way from her home and then discovers once she has left her home that the job is to work as a prostitute in an hotel.

## 4. WHAT ISN'T MODERN SLAVERY?

The following are not indications of modern slavery:

- Low pay, poor or unsafe working conditions and child labour are not indicators of slavery unless they are accompanied by coercion
- Similarly lack of union representation, living in dormitories, limited free time, lack of sick pay are also not in themselves indicators of slavery
- All the above may be criminal offences (but this will vary across jurisdictions) and as such should be reported to the authorities.

The key to modern slavery is 'coercion'. If the person or employee can leave the job or workplace easily and without threat to themselves or their family, then irrespective of whether they receive poor wages or work in an unsafe environment, or for long hours it would not constitute slavery, servitude or forced and compulsory labour.

## 5. WHAT ISN'T HUMAN TRAFFICKING?

Human trafficking should not be confused with human smuggling. The former is a crime against the person whereas the latter is a crime against the state as follows:

- Smuggling migrants is the illegal entry (usually clandestinely) of a person into a State, of which that person is not a national or resident, for financial or other material benefit.
- Smuggling is a mutually agreed service, usually involving transportation and/or fraudulent documents to enter a foreign country illegally. The person being smuggled is consenting to the movement. Once this exchange is complete the person is free to live and work where they chose, not where the smuggler dictates.
- Examples include:
  - knowingly bringing people who are illegal aliens into a country.
  - transporting and/or harbouring people once they are in a country illegally.
  - providing false identity documents or other papers required for entry to enable a person to enter a country.
  - providing means to travel clandestinely from one country to another (eg, hidden in the back of lorries or crossing a border under cover of darkness or by non-scheduled transport services (such as a dinghy to cross the English Channel).

## 6. DOES THE ACT ONLY APPLY IN THE UK?

No. The Act's extra territorial reach is one of its key features. This means the Act applies to:

- any UK nationals who commit trafficking offences anywhere in the world;
- any UK business irrespective of where their business is carried out; and
- any business that satisfies the turnover threshold that carries on all or any part of its business in the UK regardless of where that business is actually incorporated.

## 7. WHAT DOES THE ACT SAY ABOUT REPORTING MODERN SLAVERY?

As modern slavery and human trafficking are criminal offenses then suspected or known occurrences should be reported to the police or to one of the many charities that support victims. Victims should not be approached as this may put them in more danger.

If modern slavery or human trafficking is suspected because of financial irregularities, such as fraud or money laundering then this must be reported to the National Crime Agency in the usual way.

ICAEW members can contact ICAEW's confidential helpline for further advice on how to report such matters.

- [How to report suspected or known occurrences of modern slavery](#)
- [ICAEW helplines](#)

## 8. WHY DOES THE MODERN SLAVERY ACT MATTER TO ACCOUNTANTS?

Apart from the moral imperative, the Act is the first piece of legislation to spell out that although modern slavery is a crime it is not just the responsibility of the law enforcement agencies to stop such criminal activity. The Act makes it clear that businesses and other commercial organisations have a part to play in the eradication of modern slavery. It does this by placing a burden on organisations to review their supply chains for both evidence of and the risk of modern slavery and human trafficking within them and then taking action to mitigate, minimize or eliminate the illegal activity.

It is, however, more than an acknowledgement of the role businesses can play in not tolerating or eliminating slavery. The Act includes a legal obligation on some larger commercial organisations to

not only review what they are doing in this space but also to place in the public domain precisely what they are doing by publishing a section 54 Transparency in Supply Chains Statement (see below).

This is in recognition of the fact that such large businesses are in a position to do something about it. For example, if one of the biggest supermarkets in the UK decides not to source its fruit or vegetables from a particular provider or even country because of the risk of modern slavery then this could provide a very strong incentive for the provider or country to change its practices. By reporting this publicly the hope is that it will encourage consumers and investors to reconsider their purchasing activities. But it is also based on the recognition that if a large company fails to act to prevent modern slavery within its supply chains then there is likely to be a large body of consumers, employees and investors who may withdraw their support for the company as a result.

## 9. WHAT IS A SECTION 54 TRANSPARENCY IN SUPPLY CHAIN STATEMENT?

Under section 54 of the Act all in-scope commercial organisations must prepare and publish annually a Transparency in Supply Chain Statement, often called a Modern Slavery Statement.

This statement should set out what steps an organisation has taken in the last financial year to ensure modern slavery and human trafficking is not taking place in their business or supply chains. If no steps have been taken then the statement must say this.

Section 54 applies to any commercial organisation that supplies goods and services, with an annual turnover that exceeds £36 million and that carries on its business (that is trade or profession) or part of its business in the UK. Thus, body corporates, partnerships and group companies, including those with a non-UK based parent fall within the remit of the Act. An organisation can choose whether to produce a statement for each entity that meets the criteria or one for the organisation in its entirety. If the latter is chosen the statement must reflect the steps taken in all parts of the organisation.

The Secretary of State does have the option to compel an organisation to publish a statement. If that does not work then an organisation can be charged with contempt of court and face unlimited fines as well as reputational damage.

## 10. FUTURE DEVELOPMENTS?

The Act has been subject to much scrutiny since its enactment, including in 2019 a review into section 54 statements. In September 2020 the government published its **Response** to this consultation and confirmed that it was, inter alia, planning to mandate what should be included in any statement and introduce a single reporting period for all organisations. No dates for implementation have been set and most will require legislative action. The government's response did, however, reiterate that it was committed to retaining the obligation on organisations to take responsibility for identifying and mitigating the risk of modern slavery and human trafficking in their supply chains.

## FURTHER INFORMATION

- ICAEW's **Modern Slavery Hub** - this includes a number of resources on how to prepare a statement, how to spot modern slavery and sector specific advice.
- The **Modern Slavery Act 2015**.
- Government Guidance – **Transparency in Supply Chains etc. A Practical Guide**.
- Government's **Response** to the Transparency In Supply Chains Consultation published 22 September 2020.
- **Global Slavery Index** and **Anti-Slavery International** – both have useful indicators of high risk countries and industry sectors.
- **National Crime Agency** – useful for indicators and cases of modern slavery in the UK.
- The **Modern Slavery Registry** – maintains a register of all published modern slavery statements as well as analysis of the statements made by FTSE100 companies (useful to see what is good and bad practice).
- **Business and Human Rights Resource Centre** – monitors cases against companies and organisations for abuses of human rights.
- **CORE** – works on corporate responsibility and publishes a number of guides on this subject.

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