

Are you ready for the Modern Slavery Act 2015? 'Commercial Organisations' analysis

What "commercial organisations" does the MSA apply to?

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As we have outlined in our previous [updates](#), section 54 of the Modern Slavery Act 2015 (MSA) came into force on 29 October 2015 and is designed to increase supply chain transparency and place greater accountability on organisations for the condition of their supply chains.

By way of recap, in essence section 54 catches:

- A commercial organisation;
- Carrying on business or part of a business in the UK;
- Supplying goods or services; and
- Having an annual turnover of £36m or more.

Organisations caught by section 54 must produce a slavery and human trafficking statement for each financial year stating either:

- 1) the steps they have taken during that year to ensure slavery and human trafficking is not taking place in any part of its business or any of its supply chain;

OR

- 2) that it has taken no such steps.

Much of the commentary around section 54 to date has focussed on the content of the statement and the timescales to comply. There has been less talk about which "commercial organisations" will be caught under the first limb above. Some common scenarios being encountered by our clients are discussed below:

What is a commercial organisation?

A 'commercial organisation' is a body corporate or partnership wherever incorporated or formed, which carries on a business or part of a business in any part of the UK – so it covers both UK and non-UK entities. It also clearly catches limited companies, partnerships, limited partnerships and LLPs – and would include franchisers and each parent and subsidiary (whether or not based in the UK) that meets the requirements set out above.

Organisation formed outside the UK?

As regards bodies incorporated or partnerships formed outside of the UK, whether such bodies can be properly regarded as carrying on a business or part of a business in any part of the UK will be answered by applying a "common sense" approach. Government guidance states that applying a common sense approach will mean that organisations that "do not have a demonstrable business presence in the UK will not be caught by the provision". Likewise, having a UK subsidiary will not, in itself, mean that a parent company that is formed outside the UK is carrying on a business in the UK, since a subsidiary may act completely independently of its parent or other group company.

Franchise models

When calculating the turnover of a franchiser, only the revenue of that franchiser will be taken into account - and not the revenue of any franchisee. Any franchisee that independently meets the section 54 criteria will, however, also be required to publish its own statement. Additionally, franchisers who meet the turnover threshold may wish to consider the impact on their brand of the activities of franchisees in relation to modern slavery – and in doing so report on the steps taken to ensure the whole franchise is free from modern slavery despite the strict legal requirements.

Groups of companies - addressing subsidiaries

Whether a parent company's statement must also include the steps taken in relation to its subsidiaries needs to be determined on a case by case basis - it will depend on, for example, if the activities of the subsidiary in fact form part of the supply chain or business of the parent.

Subsidiary companies must produce their own statement if their own turnover meets the £36m annual threshold but they can replicate their parent company's statement (provided that the statement fully covers the steps that each organisation required to produce a statement have taken in the relevant financial year) or modify it as necessary.

Non-UK subsidiaries that do not fall within the MSA criteria

Government guidance specifically flags that it will be frowned upon for a parent company to be seen to be ignoring the behaviour of its non-UK subsidiaries – seeking to cover non-UK subsidiaries to which the MSA does not apply in a parent company statement is highly recommended, particularly where the non-UK subsidiary is in a high risk industry or location. There is also nothing to stop a foreign subsidiary or parent from producing a statement even if they are not legally obliged to do so – section 54 is all about improving transparency to prevent slavery and forced labour from occurring.

We anticipate that many groups of companies will work together to produce a single joint statement to cover a parent and its subsidiaries.

Charities and universities

Government guidance indicates that charities and universities engaging in commercial activities will not be exempt from the requirement if they fulfil the relevant criteria (regardless of their purpose for which profits are made).

Government guidance on the MSA specifically highlights that it does not matter if the organisation pursues primarily charitable or educational aims or purely public functions.

Organisations which are not caught

An organisation which does not meet the section 54 requirements may still wish to consider conducting a risk assessment in relation to its business and supply chains to guard against modern slavery and protect its reputation. The extent to which such an organisation decides to follow the spirit of the MSA will depend on the circumstances.

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