

A slave to the NHS? Modern Slavery and the NHS Supply Chain

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Introduced in October 2015, the Modern Slavery Act (MSA) is a landmark move toward tackling illegal exploitation within the UK. This article focuses on the impact of the MSA on the NHS Supply Chain. The MSA requires certain organisations to disclose what activity they are undertaking to eliminate slavery and trafficking from their supply chains and their own business for each financial year of the organisation. Section 54 of the MSA sets out the requirements for transparency in supply chains and it is this section which is of key relevance to the NHS.

What does section 54 say?

Under Section 54 of the MSA, a new “slavery and human trafficking statement” must be produced annually by all “commercial organisations” which supply goods and services and have a turnover of not less than £36 million (less trade discounts, VAT and any other taxes on income from goods and services).

A “commercial organisation” is defined as:

“a body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom”

The statement must set out the steps the organisation has taken to ensure there is no slavery or human trafficking in its supply chains or in any part of its own business.

The statement may include information about the organisation’s:

- policies relating to slavery and human trafficking;
- structure, business model and supply chains;
- business and supply chains where there is a risk of slavery and human trafficking taking place and the steps it has taken to assess and manage that risk;
- effectiveness in ensuring that slavery and human trafficking is not taking place in its businesses or supply chains, measured against appropriate key performance indicators;
- due diligence processes in relation to slavery and human trafficking in its business and supply chain;
- training about slavery and human trafficking which it has made available to its staff.

Does the MSA apply to NHS organisations?

Government guidance ‘Transparency in Supply Chains’ provides that “the Government expects that whether such a body or partnership can be said to be carrying on a business will be answered by applying a common sense approach. So long as the organisation in question is incorporated (by whatever means) or is a partnership, it does not matter if it pursues primarily charitable or educational aims or purely public functions. The organisation will be caught if it engages in commercial activities and has a turnover of £36m, irrespective of the purpose for which profits are made.

NHS Foundation Trusts and NHS Trusts, which are established as bodies corporate under the NHS Act 2006, are providers of goods and services and also frequently form or participate in forming companies. They will therefore be required to comply with the requirements of Section 54 if they meet the turnover threshold.

This is not expressly stated in the MSA or the Guidance, and therefore a note of caution should be exercised. But read together, the two documents appear to indicate that NHS Trusts and NHS Foundation Trusts should be producing and publishing statements in accordance with the MSA if they otherwise fulfil the above criteria.

CCGs and NHS England are also bodies corporate which have been created by statute but they do not supply goods or services. On the face of it value therefore, they do not fall within Section 54. However, they will need to consider the application of the MSA in the event that they create or participate in any companies.

In addition the MSA is likely to apply to NHS England's role hosting commissioning support units.

Practical steps

We have suggested some practical steps NHS organisations may wish to take when procuring services to assist with providing the assurance required by section 54:

- Procurement policy – this should be amended to confirm the processes the organisation will follow to ensure compliance with Section 54 when commissioning services;
- PQQ stage - NHS organisations should include questions which require potential providers to declare that they comply with the Act;
- ITT stage - one of the requirements for the winning bidder should be a requirement to ensure ongoing compliance with the Act;
- Contracts with providers – these should include:
 - Warranties whereby the supplier gives an assurance or promise to comply with the Act, a breach of which may give rise to a claim for damages and/or termination of the contract;
 - Indemnities – an undertaking by the supplier to meet any costs incurred by the NHS organisation as a result of the supplier's non-compliance with the Act;
 - Rights to request and audit information in respect of the supplier's ongoing compliance with the Act;
 - Rights to terminate if the supplier commits an offence under the Act.

For advice on the steps organisations should take before preparing transparency statements you can find a pool of useful resources about the Modern Slavery Act on our service page:

Modern Slavery Act →

</services/criminal-compliance-and-regulatory/modern-slavery-act>

MSA and procurement processes

It is also, worth noting that NHS organisations are contracting authorities for the purposes of the Public Contracts Regulations 2015 (which will apply to NHS procurements from 18 April 2016) and that the Regulations now provide that organisations in breach of sections 1,2 or 4 of the MSA (which make it an offence to hold people in slavery, forced labour or servitude; or to carry out human trafficking, and related offences) must be excluded from procurement processes conducted under the Regulations (Regulation 57(1)).

Modern Slavery Act Navigator

To assist our clients, we have put together a suite of template documents that seek to arm an organisation with the tools its needs to prepare for the Section 54 requirements.

These documents are intended to provide you with a structure to develop your own bespoke practices and documents to comply with Section 54. To help you get started tailoring these templates to your specific business operations we have included one hour of phone or email time to enable you to discuss development of these templates with one of our specialists, as part of this Modern Slavery Act product.

If you require any further advice or support in respect of the Act and its impact on the NHS Supply Chain please contact us.

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