

A New Compliance Challenge For Companies Doing Any Business In U.K.

Law360, New York (May 27, 2015, 8:52 AM ET) --

Multinational companies with business interests in the U.K. take note: the U.K. just ramped up its role in the global fight against human trafficking. On the heels of the [U.K. Bribery Act of 2010](#) (a close copy of the U.S. Foreign Corrupt Practices



T. Markus Funk



Paul O. Hirose



Elizabeth Breakstone

Act), the U.K. government has now taken cues from another novel U.S. enactment — this time the [California Transparency in Supply Chains Act](#) (the “California Act”) — and delivered its own disclosure regime on the doorsteps of the international business world.[1]

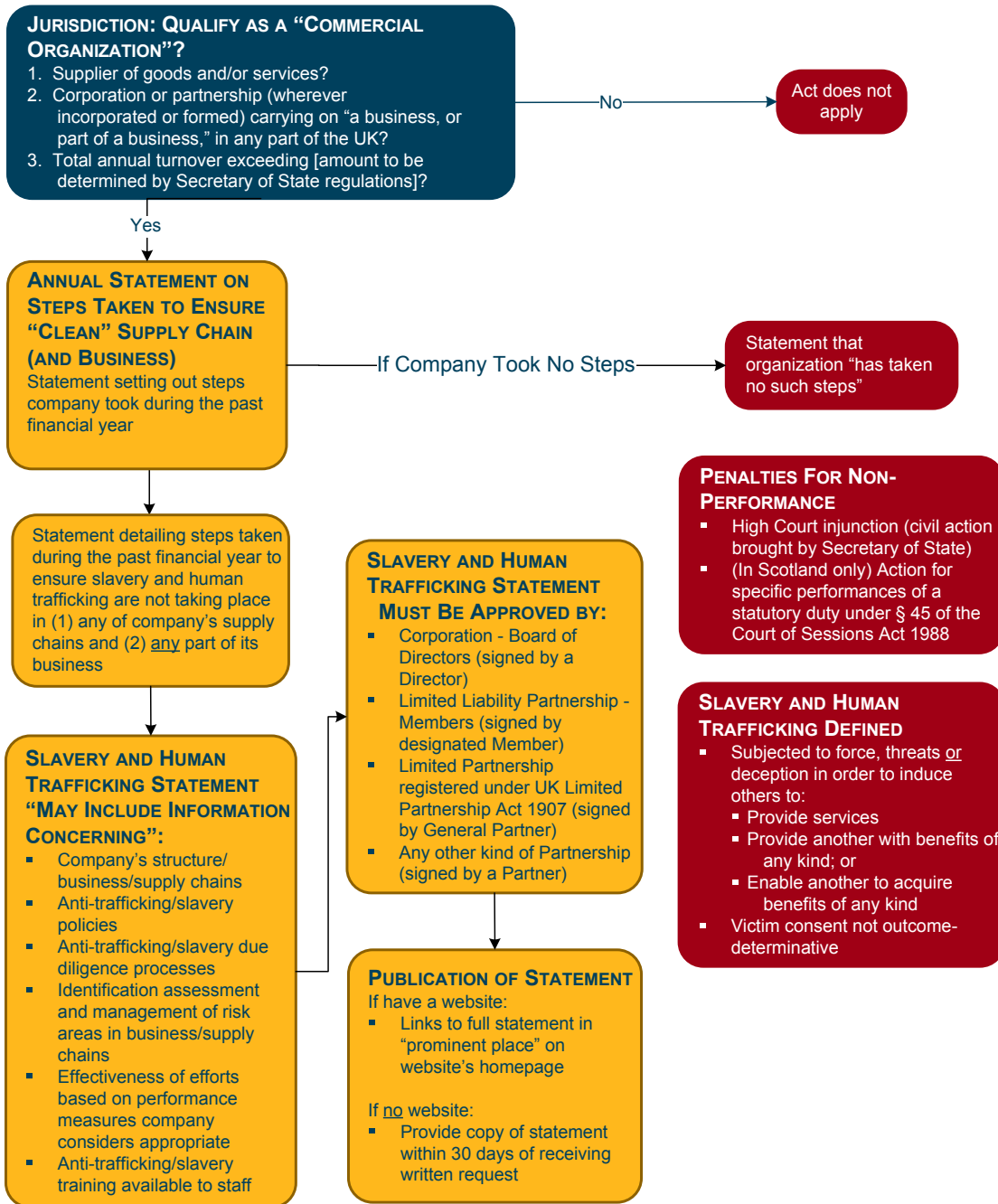
The [U.K. Modern Slavery Act of 2015](#) (the “U.K. Act”), just passed by Parliament, will require certain businesses to make a slavery and human trafficking disclosure statement on their websites. Those familiar with the California Act will recognize many of the U.K. Act’s requirements. However, there are differences. Most notable, perhaps, is the U.K. Act’s broader jurisdictional requirements. Its disclosure requirements extend to any company that:

- Carries on a business, or part of a business, in any part of the United Kingdom;
- Has a total turnover of no less than an amount to be determined by the U.K. Secretary of State; and
- Supplies goods or services (in contrast to the California Act, which applies only to companies that are either a retail seller or manufacturer)

Additionally, unlike the California Act, which requires companies to expressly address a list of subject areas, the U.K. Act merely provides a non-exhaustive list of suggested disclosure subjects.

UK MODERN SLAVERY ACT OF 2015: TRANSPARENCY IN SUPPLY CHAINS DISCLOSURES

(PART 6):



PerkinsCoie.com The information contained here is not, and should not be relied upon as, legal advice and is not a substitute for qualified legal counsel.

Who is Governed by the U.K. Act?

The U.K. Secretary of State, for its part, has not yet determined the “total turnover” amount, and is currently accepting comments as to what might be an appropriate level. A final figure is expected by October 2015. The Secretary of State may also issue additional guidance regarding duties imposed on companies under the UK Act, including clarification as to what specific information must be included in the slavery and human trafficking statement.

What is a Slavery and Human Trafficking Statement?

Each fiscal year, a covered company is required to make a statement setting forth what it has done to ensure that trafficking is not taking place in its business or supply chain (a “Disclosure Statement”). Alternatively, the company can make a statement that it has taken no such steps. The Disclosure Statement can but does not have to include:

- (a) the organization’s structure, its business and its supply chains;
- (b) its policies in relation to slavery and human trafficking;
- (c) its due diligence processes in relation to slavery and human trafficking in its business and supply chains;
- (d) the parts of its 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;
- (e) its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate;
- (f) the training about slavery and human trafficking available to its staff.

Who Must Approve the Disclosure Statement?

The U.K. Act seeks to ensure clear accountability by requiring the disclosure statement be approved and signed in a specific manner. Corporations must have the disclosure statement approved by the board of directors and signed by a director; limited liability partnerships must get member approval and signature by a designated member; limited partnerships must get general partner’s signature; and any other partnership must get a partner’s signature.

Where Should the Disclosure Statement be Made?

Taking its cue from the California Act, the U.K. Act requires that any company with a website (1) publish the entire disclosure statement on its website, and (2) have a link to the disclosure statement in a prominent place on the website homepage. In the unlikely chance that a qualifying company has no website, it must provide its disclosure statement within 30 days of receiving a written request.

What if a Company Fails to Include the Required Disclosure Statement?

The U.K. Secretary of State may bring civil proceedings in the High Court for an injunction if a company violates the U.K. Act’s disclosure requirements. In Scotland, a proceeding may be brought for specific performance of a statutory duty under section 45 of the Court of Session Act 1988.

Getting Prepared for the U.K. Act’s Compliance Requirements (and the California Act’s Existing Ones)

Businesses that are already in full compliance with the California Act’s disclosure requirements and have functioning, substantive anti-trafficking compliance programs will likely have a fairly easy time complying with the U.K. Act. However, a bulk of companies are still coming up to speed on the California Act — the U.K. Act reinforces that substantive compliance is no longer optional.

Compliance Program Guidelines

What follows are some basic guidelines if you are just getting started (or fine-tuning) their existing policies

- **Enact and Enforce Meaningful Policies** (or add policy language) focused on identifying and eliminating risks of forced labor, slavery, and human trafficking and child labor (collectively “coerced and child labor”) within your supply chains. Such internally consistent policies or policy language should be included in (1) codes of conduct; (2) annual compliance certifications; (3) standard contract language; (4) due diligence questionnaires; (5) supplier statements of conformity; etc.
- **Standard Contract Language** should include language addressing, among other key areas:
 - Indemnification
 - Audit rights
 - Requirement of full cooperation in the case of any internal investigation or review
 - Requirement of immediate notification in the case of actual or potential nonperformance/problems
 - Right to, as needed, contact the relevant authorities in the case of violation.
 - Consent to follow company-developed action plan in case of any instances of noncompliance
- **Supply Chain Suppliers Should Certify** that, in addition to the above, materials incorporated into products comply with (1) your company’s code of conduct, and (2) the laws against coerced and child labor in the country or countries in which they are doing business. Key substantive provisions should include reps and warranties that a supplier:
 - Complies with all applicable national and international laws and regulations, as well as your code of conduct, including prohibition and eradication of coerced and child labor in its facilities, and that it requires its suppliers, including labor brokers and agencies, to do the same.
 - Treats its workers with dignity and respect, provides them with a safe work environment, and ensures that the work environment is in compliance with applicable environmental, labor and employment laws, and your code of conduct.
 - Refrains from corrupt practices, and does not engage in human rights violations.
 - Has not and will not, directly or indirectly, engage in certain activities connected to coerced and child labor. These activities should be expressly detailed in the certification.
- **Design a Risk-Based Labor Verification/Audit Program** to evaluate and address risks of coerced and child labor in your supply chains:
 - Identify the greatest risks identified within the supply chain;
 - Design measures tailored to reduce, control and eliminate those risks;
 - Decide whether to employ independent third parties to conduct these verifications/audits;
 - Consider folding into the verification process consultations with independent unions, workers’ associations, or workers within the workplace;
 - Ensure that audits of suppliers evaluate supplier compliance with company standards for eliminating coerced and child labor.

- **Develop and Publicize Internal Accountability Standards**, including those related to supply chain management and procurement systems, and procedures for employees and contractors regarding coerced and child labor. Make sure you have procedures in place for employees and contractors who fail to meet these standards.
- **Assess Supply Chain Management and Procurement Systems** of suppliers in the companies' supply chains to verify whether those suppliers have appropriate systems to identify risks of coerced and child labor within their own supply chains.
- **Train Employees and Business Partners**, particularly those with direct responsibility for supply chain management, on the company's expectations as they relate to coerced and child labor, particularly with respect to mitigating risks within the supply chains of products.
- **Guarantee that Remediation is Provided** for those who have been identified as victims of coerced and child labor.

U.K. Act/California Act Comparison Matrix

Legislation	Jurisdiction	Disclosure Requirements	Nondisclosure/ Substantive Requirements	Penalties	Effective Date
U.K. Modern Slavery Act of 2015 (Part 6 - Transparency in Supply Chains Disclosures)	All companies that are: 1. Supplier of goods and/or services 2. Corporation or partnership (wherever incorporated or formed) carrying on "a business, or part of a business," in any part of the U.K. 3. With a total annual turnover exceeding [amount to be determined by Secretary of State regulations]	Statement detailing steps taken during the past financial year to ensure slavery and human trafficking are not taking place in (1) any of company's supply chains and (2) any part of its business. Approved/signed disclosure statement <i>may</i> include information	None	<ul style="list-style-type: none"> • High Court injunction (civil action brought by Secretary of State) • In Scotland only, action for specific performances of a statutory duty under § 45 of the Court of Sessions Act 1988 	Royal Assent Received March 26, 2015

		<p>concerning:</p> <ul style="list-style-type: none"> • Company's structure/business/supply chains • Anti-trafficking/slavery policies • Anti-trafficking/slavery due diligence processes • Identification and management of higher-risk areas in business/supply chains • Effectiveness assessment, of measures, based on performance measures company considers appropriate • Anti-trafficking/slavery trainings available to staff 			
California Transparency in Supply Chains Act (SB657)	All companies that are: 1. Retail seller/manufacturer (based on tax status);	Disclosure must address what, if anything, done to: 1. Verify	None	• Cali attorney general injunction for noncompliance	Jan. 1, 2012

	<p>2. With annual gross worldwide receipts of at least \$100 million; and</p> <p>3. “Doing business” in California (property or salaries in California exceeding \$50K).</p>	<p>supply chain to evaluate/address “risks of human trafficking and slavery.”</p> <p>2. Audit suppliers to evaluate compliance with company standards. Unannounced and through independent auditors?</p> <p>3. Obtain certification from direct suppliers that materials incorporated into goods comply with local anti-trafficking and slavery laws.</p> <p>4. Maintain internal “accountability standards and procedures” for those who fail to meet your standards.</p> <p>5. Provide training to employees/management with supply</p>		<p>nce.</p> <ul style="list-style-type: none"> • Potential class actions for false or misleading declarations • Consumer and advocacy group actions 	
--	--	---	--	---	--

		<p>chain responsibility (focus on mitigating supply chain risks and identifying trafficking). Note: Disclosures must be on Internet homepage. Homepage disclosure must be through a “conspicuous” and “easily understood” link to full-text document.</p>			
<p>Amendment to Federal Acquisition Regulation Subpart 22.17 and Contract Clause 52.222-50</p>	<p>Applies to all federal contractors for goods/services (size/nature of contract irrelevant)</p>	<p>For contracts for services or supplies that are not off-the-shelf items that: (1) exceed \$500,000 and (2) to be performed outside U.S., contractors and subcontractors must create and post at the workplace and on their company website a formal</p>	<p>Federal contractors, subcontractors, their employees and their agents are prohibited from engaging in human trafficking, as evidenced through:</p> <ul style="list-style-type: none"> • Using forced labor • Misleading/fraudulent recruitment practices • Charging recruitment fees • Destroying, concealing, confiscating or 	<ul style="list-style-type: none"> • Imprisonment: “Knowing and willful” false certification is a crime. Reckless disregard or conscious avoidance of truth qualify as “knowing.” Consequences include up to five years imprisonment and \$250K fine. 	<p>March 2, 2015</p>

		<p>compliance plan including various categories of information, and submit annually certify that a compliance plan has been implemented .</p>	<p>otherwise denying employee access to his or her identity docs</p> <ul style="list-style-type: none"> • Failing to pay return transportation costs • Failing to provide employment agreement (if required) in employee's native tongue and prior to employee's departure from home country. Contractors and their subcontractors must agree to: <ul style="list-style-type: none"> • "Cooperate fully" with, and provide reasonable access to, agencies conducting investigations into, among other things, violations of this order • Self-report, among other things, activities that are inconsistent with the requirements of this order or any other applicable law or regulation 	<ul style="list-style-type: none"> • False Claims Act: Government Fraud (31 U.S.C. §3729). • TVPA (22 U.S.C. § 7104(g): Federal agency may terminate your contract. • Debarment: Business death knell for noncompliance (9.406-2). • Loss of award fee or termination of contract 	
--	--	---	---	---	--

<p>Business Transparency on Trafficking and Slavery Act of 2014 (pending legislation - HR 4842)</p>	<p>All companies that are: 1. Publicly traded; and 2. Have annual gross receipt in excess of \$100 million</p>	<p>Annual filing with SEC of report titled “Policies to Address Forced Labor, Slavery, Human Trafficking and the Worst Forms of Child Labor.”</p>	<p>None</p>	<ul style="list-style-type: none"> • SEC action for failure to adequately comply. • Potential class actions for false or misleading declarations • Consumer and advocacy group actions. 	<p>Depends on if/when pending legislation passed</p>
<p>Uniform Law Commission’s Act on Prevention and Remedies for Human Trafficking (Section 8 - “Business Entity Liability”)[2]</p>	<p>Undefined/Unlimited</p>	<p>None</p>	<p>Business entity may not “knowingly engage in conduct that constitutes human trafficking” and employee or agent engaged in human trafficking, and that conduct is “part of a pattern of activity ... for the benefit of the entity, which the entity knew was occurring and failed to take effective action to stop.”</p>	<ul style="list-style-type: none"> • Fine of not more than \$1 million per offense; • Disgorgement; and • Debarment from state and local government contracts 	<p>As dictated by enacting/adopting state</p>
<p>German Criminal Code, Section 233 (“Human</p>	<p>Territorial</p>	<p>None</p>	<p>Person may not “exploit another person[‘s] predicament or helplessness arising from</p>	<ul style="list-style-type: none"> • 6 months - 10 years imprisonment 	<p>2009</p>

<p>Trafficking for the Purpose of Work Exploitation”)</p>			<p>being in a foreign country to subject them to slavery, servitude or bonded labor, [or treats them notably differently from other employees].”</p>		
<p>French Bill n. 2578</p>	<p>Applies to companies that: 1. For the past two consecutive fiscal years had 5,000 or more employees (including in direct and indirect subsidiaries); 2. Have a registered office in French territory; or 3. Have 10,000 or more employees (including in direct and indirect subsidiaries) located on “French territory or abroad”</p>	<p>Develop and publish due diligence plans (“vigilance plan”) for human rights, as well as environmental and social risks</p>	<p>Develop “reasonable oversight measures to identify and prevent risks of violations of human rights and fundamental freedoms ...” (Note: Extends to “companies it controls, directly or indirectly ... as well as the activities of [the company’s] subcontractors or suppliers with which it has an established commercial relationship”; plan to include focus on preventing “active and passive corruption in the company and the companies it controls”</p>	<p>10 million euro fine for noncompliance</p>	<p>Civil penalties</p>

—By T. Markus Funk, Paul O. Hirose and Elizabeth R. Breakstone, [Perkins Coie LLP](#)

[Markus Funk](#) is a partner in Perkins Coie's Denver and Chicago offices, a former federal prosecutor who served in the Balkans with the U.S. State Department, and founding co-chairman of the firm's corporate social responsibility and supply chain compliance practice. In 2012, he co-authored [Child Exploitation and Trafficking: Examining the Global Challenges and the U.S. Responses](#) with U.S. District Judge Virginia Kendall.

[Paul Hirose](#) is a past president of the National Asian Pacific [American Bar Association](#) and senior counsel with Perkins Coie in Los Angeles, where he is a member of the firm's supply chain compliance practice.

[Elizabeth Breakstone](#) is an associate in the firm's Seattle office and is also a member of the firm's supply chain compliance practice.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] Note that, in our comparison chart below, we summarize a number of anti-trafficking regimes - including that set up in a pending French Bill; recent amendments to the Federal Acquisition Regulation ("FAR"); and the Uniform Law Commission's Anti-Trafficking Act (at present adopted by at least a dozen states) - that go beyond mere disclosure by imposing various affirmative duties on companies. We anticipate that, with time, the business community in the US, Europe, and elsewhere will see an increase in such proscriptive (and descriptive) legislation.

[2] Publisher's note: Co-author T. Markus Funk was the American Bar Association's liaison to the ULC's drafting committee.