



Reporting Requirements outside of the Annual Report

Online statutory reporting

Along with other forms of social media the company website has become the key tool for companies to communicate with customers, investors and other stakeholders. Whereas in the past, statutory reporting requirements have traditionally ended up in the annual report, a number of recent statutory reporting requirements demand publication either on the Company's website or an alternative online database. This Prism Briefing considers three significant statutory reporting requirements introduced in the last 12 to 18 months which do not directly impact on the annual report.

Transparency in supply chains statement (s.54 Modern Slavery Act 2015)

The Modern Slavery Act 2015 (the **MSA**) introduced the requirement (under Section 54) for large businesses to publish on their website an annual statement ("Slavery and Human Trafficking Statement") setting out the steps they have taken in the year to ensure that their business and supply chains are slavery free. The intention of Section 54 is to encourage businesses to do more to change their policies and practices because they recognise that it is the right thing to do, not because it is a legal obligation.

Who does the reporting requirement apply to?

The requirement to publish a Slavery and Human Trafficking Statement applies to any UK or non-UK commercial organisation carrying on business or part of a business in the UK (in any part of a group structure) that has a turnover of more than £36m per year and provide goods and services. Where a parent and one or more subsidiaries in the same group are required to produce a statement, the subsidiaries can use the parent's statement to meet the requirement as long as that statement fully covers the steps that each entity has taken in the relevant financial year.

Slavery and Human Trafficking Statements should be approved by the organisation's board, signed by a director (or equivalent), and published on the organisation's website with a link to the statement in a prominent place on the website's homepage.

What is the deadline for publishing a Slavery and Human Trafficking Statement?

The requirement applies to financial years ending on or after 31 March 2016. Home Office guidance encourages companies to publish their statement as soon as possible and within 6 months of their financial year end. Companies may decide to publish their Slavery and Human Trafficking Statement alongside their annual report and accounts.

What information must be included?

The statement must include either details of the steps that the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains and in any part of its business, or a statement that no such steps have been taken. Section 54 does not prescribe form or length for the statement, but does list areas that the statement may include information about (further guidance as



to the type of activity which could be disclosed in relation to each of which is set out in Home Office Guidance – see useful sources below).

The Slavery and Human Trafficking Statement is an additional requirement over and above the disclosures required by quoted companies in their strategic reports relating to social, community and human rights issues. However, it is evident in the Slavery and Human Trafficking Statements published since the requirement came into force that the best reports have approached the requirement as part of the company's wider activities around culture, business conduct and ethics rather than as a standalone piece of work.

It is expected that, in time, boilerplate Slavery and Human Trafficking Statements will be negatively received by investors and other stakeholders and may damage the company's reputation. Although there are enforcement provisions in the MSA, the government's expectation is that consumers, investors and non-governmental organisations will engage and/or apply pressure where they believe a company has not taken sufficient steps.

What should companies be doing now?

Companies should consider how existing policies and procedures around obligations arising from other legal or regulatory requirements may impact on, or support steps taken in connection with, MSA obligations. Examples could include supplier questionnaires which may have been developed/amended in respect of the Bribery Act 2010, or the potential link between supplier payment practices and demands on suppliers or sub-contractors which may lead to human rights violations.

Guidance published by the CORE Coalition also makes it clear that MSA statements should evolve year-on-year and that simply reproducing the same statement will not represent good practice. The key question that companies should ask themselves when approaching subsequent Slavery and Human Trafficking Statements should be whether any new risks have emerged during the reporting period.

Gender Pay Gap Reporting

The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (the **GPG Regulations**) come into force with effect from 6 April 2017 and introduce long anticipated mandatory gender pay gap reporting requirements for large private and voluntary sector employers. Relevant employers will be required to publish gender pay gap information on their own website, and maintain it online for three years, as well as uploading certain information to a government website.

Who does the reporting requirement apply to?

The GPG Regulations apply to private and voluntary sector organisations employing more than 250 employees on 5 April each year. Each entity in a group is to be considered as separate for gender pay gap reporting purposes, and it is therefore possible that a PLC holding company may not be required to publish gender pay gap information, but one or more of its subsidiaries is. This may have the effect of stripping senior executive pay out of the reportable data for some companies where staff are employed by operating subsidiaries but executive directors by the holding company itself.



What is the deadline for publishing gender pay gap reports?

Employers are required to analyse gender pay gap data as at 5 April each year, with the data to be published as soon as possible and by no later than 4 April in the following year. Those effected will therefore need to publish their first reports providing data as at 5 April 2017 by no later than 4 April 2018.

What information must be included?

Gender Pay Gap Reports must include: overall gender pay gap figures; the proportion of men and women in four pay bands based on the relevant employer's overall pay range; information on the gender bonus gap (the difference between men and women's mean and median bonus pay) over a 12 month period; the proportion of male and female employees who received a bonus in the same 12 month period; and a written statement confirming the accuracy of the data, signed by a director (or equivalent).

Optional narrative disclosures may be included to explain any pay gaps or disparities, and for organisations to set out the action they propose to address any issues.

Non-statutory guidance published by Acas and the Government Equalities Office (the **Acas Guidance**) provides helpful guidance and examples to assist organisations in determining what data needs to be collected and how rates of pay, bonuses, and gender pay and bonus gap information should be calculated. This includes steps to correctly identify employees to be reported on, types of pay that need to be included or excluded from the calculations, how to make the calculations and suggestions as to what may be included in supporting narrative disclosures. Some key points from the Acas Guidance are:

- It is important to understand which employees need to be included in the calculations. All "relevant employees" must be included in the gender **bonus** gap calculations but only "full-pay relevant employees" must be included in the gender pay gap calculations.
- As casual workers and some contractors will count towards the 250 employee threshold, companies close to the threshold will need to assess each year whether they are in scope.
- Overtime pay, any redundancy or termination payment, pay in lieu of leave, benefits in kind or provided through salary sacrifice and expenses incurred in the course of employment are specifically **excluded** from "ordinary pay" for the purposes of the calculations.
- For gender bonus gap reporting, bonuses should only be included if they were actually received by the employees in the relevant bonus period (the 12 month period ending on the snapshot date).
- Narrative supporting statements could be to aid understanding of the data (i.e. where a number of key reasons for a gender pay gap have been identified), to explain that measures to reduce the gender pay gap have been introduced but need time to take effect, or to report a reduction in a gender pay gap as a result of the implementation of successful actions.

Where should gender pay information be published?

Employers must publish the results of their gender pay and gender bonus gap calculations, along with the written and signed statement on their own website (in a place where the information can reasonably be expected to be found) and on a designated government website (details of which are awaited).



What should companies be doing now?

For corporate groups, the first step will be to establish which entities are caught by the reporting requirement and identifying how many separate gender pay gap reports will be required.

Although the calculations for gender pay and gender bonus gap reporting are relatively simple, collecting and appropriately categorising employee data can be complex and time consuming, particular for large groups with high numbers of employees. Snapshot date data will need to be analysed and cleansed to ensure that “relevant employees” and “relevant full-pay employees” are correctly identified, and that appropriate types of pay and bonus pay are included and correctly calculated. Companies should also consider whether to collect race data in light of the McGregor-Smith review on Race in the Workplace.

Most employers should be able to base reports on the gender identification its employees have provided for HR/payroll, but where there is uncertainty the Acas Guidance recommends that employers should establish a method by which all employees are required to confirm or update their gender. Where an employee does not self-identify as either gender, an employer may omit the individual from the calculations.

Once an employer’s gender pay gap is established, the Acas Guidance recommends that employers use the information to encourage and initiate an action plan with the aim of reducing the gender pay gap in their workplace. The guidance sets out a number of essential considerations for employers to take into account to aid in reducing the gender pay gap.

Payment Practices Reporting

The Reporting on Payment Practices and Performance Regulations 2017 (the **Regulations**) and equivalent regulations for LLPs were published in March 2017 under a power provided in the Small Business Enterprise and Employment Act 2015 and will come into force for financial years beginning on or after 6 April 2017. The Regulations are designed to address concerns about poor payment practices in large companies and are indicative of the government’s view that voluntary incentives to address poor payment practices (for example the Prompt Payment Code) have not been effective.

Who does the reporting requirement apply to?

The Regulations (and the LLP equivalent) apply to large UK incorporated companies and LLPs, and “large” for these purposes is assessed using the same Companies Act 2006 test as for accounting purposes. Therefore, a company or LLP is large for these purposes if it exceeds two or more of the following thresholds on each of its last two balance sheet dates:

- Turnover of £36m
- Balance sheet total of more than £18m
- Average number of employees of 250

If a company or LLP is a parent, total group figures must be taken into account when determining whether the Regulations apply. However, a subsidiary cannot rely on the publication of a group report under the Regulations; each qualifying entity is required to report in its own right. Government guidance on reporting



on payment practices and performance was published in January 2017 and includes a helpful flowchart for assessing whether or not a particular entity is required to comply.

What is the deadline for publishing payment practice reports?

The Regulations apply to qualifying entities in respect of financial years commencing on or after 6 April 2017. Such entities must report twice per year, one report in respect of the first six months of the financial year and the other in respect of the second half. The reports must be produced and filed within 30 days of the end of each reporting period.

What information must be included?

For each reporting period, companies and LLPs must provide information in respect of 'qualifying contracts', which are contracts:

- Between two or more businesses (business to consumer contracts are out of scope);
- Which have a sufficient nexus to the UK (a complex test applies but in short if the contract could be governed by UK law (whether at the choice of the parties or otherwise) and one or both parties are established in the UK or the services under the contract will be performed in the UK, then it is likely to be caught by the Regulations);
- For goods, services or intangible property;
- Not for financial services (these are excluded on the basis that they are not comparable to contracts for goods and services and therefore could skew the reporting data).

The government guidance sets out a useful summary of the information required to be included in the reports, such as narrative descriptions of standard payment terms and dispute resolution processes, statistics on the average number of days taken to make payment and the percentage of payments within various time bands and not paid within agreed terms, and various tick box statements relating to additional payment practices which may be made available to suppliers.

Where must the information be published?

The reports under the Regulations must be approved by a director. There is no requirement for the report to be approved by the board as a whole, but the approving director should be appropriately authorised by the board. Once approved, the reports must be sent to a centrally hosted page on the www.gov.uk website (details of which are yet to be made available). It is likely that a pro-forma reporting template will be made available. Reports will be publically accessible immediately after they have been sent to the central website. There is no requirement for companies or LLPs to put the reports on their own website, but many may choose to do so.

What happens if reports are not filed?

Breach of the Regulations is a criminal offence punishable by a fine on summary conviction in magistrate's court. A company and its directors are liable if the report is not published (a director will not be liable if he or she took reasonable steps to ensure compliance), and it is also an offence to publish, or cause to be published, false or misleading information. However, the explanatory memorandum to the Regulations suggests that the



Government's hope is that company's and LLPs will be encouraged to comply (and will do so) before criminal sanctions are pursued.

What should companies be doing now?

As with gender pay gap reporting, it will be important for companies and LLPs to take steps to address these reporting requirements well in advance of their first reporting deadline. The data to be collected may not be easily accessible, and a significant degree of analysis and investigation may be required in order to identify all qualifying contracts. It will be particularly important for groups to identify which of their entities will be required to produce reports. Boards should be briefed on the reporting obligation, and a sufficiently senior member of the executive team should be given responsibility for overseeing the preparation for these reports. Time should be built into the first reporting timetable to allow for data to be verified, and the signing director should be appropriately authorised on behalf of the Board. Due to the short timescale for reporting, companies may wish to test their data capture and collation procedures in advance of the deadline for the first reporting period.

Prism perspective

The Modern Slavery Act, Gender Pay Gap and Payment Practices reporting requirements introduce significant obligations on companies. Many will welcome the fact that these obligations sit outside the annual report as the steps required to generate the reports would impact significantly on the workload of resource otherwise engaged in producing the annual report. However, compiling the reports (and in particular the gender pay gap and payment practices reports) will be a complex and time consuming process. Senior management engagement will be required to ensure that data is collected and analysed in a timely fashion, and Boards should be briefed as to the requirements as they will be accountable in the event that deadlines are missed.

Whether or not these new reporting requirements, and other recently introduced requirements such as country by country reporting by extractive industries and tax strategy reporting by large companies, are indicative of a trend for compliance reporting to be website rather than annual report based remains to be seen, but it is interesting that in these three instances the government has seen fit to introduce legislative reporting requirements to seek to influence corporate behaviour.

Useful Sources

Transparency in Supply Chains etc. – A Practical Guide (Home Office Guidance)

Law Society Practice Note: Modern Slavery Act and Section 54

CORE Guidance <http://corporate-responsibility.org/issues/modern-slavery-bill/>

Acas Guidance <http://www.acas.org.uk/index.aspx?articleid=5768>

BEIS Guidance to Report on Payment Practices and Performance

<https://www.gov.uk/government/publications/business-payment-practices-and-performance-reporting-requirements>

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