



Chemical & Product Regulation ADVISORY ■

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UK Follows California's Lead in Holding Companies Responsible for Slavery in Supply Chain

By Maureen Gorsen

Europe has taken a page from California and adopted the California approach to corporate responsibility for supply chain transparency and eradicating slavery and human trafficking in the global supply chain.

All companies selling goods and services into both the United Kingdom and California will need to harmonize their global compliance for both jurisdictions.

In March 2015, the United Kingdom passed the Modern Slavery Act of 2015 ("UK Act"). This is the first of its kind in Europe. While most of the UK Act addresses the violations and sanctions against those directly engaged in the criminal activities of slavery and human trafficking, the UK Act includes a new corporate reporting obligation that is modeled on a 2010 California law.

The UK Act's new corporate reporting obligation is similar in content and structure to, and appears to borrow in significant part from, California's Transparency in Supply Chain Act (SB 657) enacted in 2010. The California law required corporations to comply by January 1, 2012, and the new UK Act requires compliance by October 15, 2015. There are some differences in the compliance required by both jurisdictions, but it appears possible for sellers of products into both jurisdictions to comply with both laws with some coordination.

Who Has a Duty to Comply in both CA and the UK?

Under the California law, retail sellers and manufacturers selling goods into California and having annual worldwide gross receipts over \$100 million (as defined in California's Revenue and Tax Code Section 25120) are subject to this law. The California Franchise Tax Board has recently provided a list of all companies required to comply based on tax returns filed after January 1, 2011, to the California attorney general for enforcement purposes. Thousands of companies have received a letter from the attorney general in 2015 indicating the commencement of their enforcement program.

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Under the UK Act, it is not yet certain which companies have an obligation to comply. While the California Act clearly established a threshold for compliance, the UK Act has deferred the UK Secretary of State's determination of the threshold (termed the "total turnover," equivalent to the gross receipts concept in California law) to further implementation. The UK Act could apply to much smaller companies, with as low as \$50 million (or £36 million) in total turnover, or much larger, with as high as \$1 billion.

What Are a Business's Compliance Duties Under Both Acts?

In both the California and UK laws, the substance of the compliance requirement is a moving target. The California statute states the five main disclosure requirements in a rather straightforward fashion; the California attorney general recently released "The California Transparency in Supply Chains Act: A Resource Guide" (the "AG Guide"), which offers recommendations for best practices that go beyond the statute's requirements. Thus, the California law sets a floor on what must be disclosed, while the AG Guide sets a higher bar for the "best" disclosures.

Under the California law, each retailer or manufacturer must disclose through a link on its web homepage that it does the following:

- Engages in internal verification of product supply chains to evaluate and address risks of human trafficking and slavery (and must specify that this verification was not conducted by a third party).
- Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains (and specify if the verification was not an independent, unannounced audit).
- Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking in the country or countries in which they are doing business.
- Maintains internal accountability standards and procedures for employees or contractors failing to meet its standards.
- Provides a training program for employees and management on human trafficking and slavery and mitigating risks within supply chains of products.

The UK Act is less prescriptive, stating only that a company provide a statement of "the steps" it has taken to ensure that slavery and human trafficking is not taking place "in any of its supply chains" or parts of its business. Or the company may state that it has taken no steps at all. But then the UK Act offers a list of suggested topics to include in the company's statements, including descriptions of its policies, due diligence processes, training, performance measures, an assessment of the effectiveness of its program and identification of parts of its supply chain at greater risk of slavery and human trafficking.

Some Key Differences

Under the UK Act, the disclosure statement must be adopted annually at the end of each financial year, and it must be signed and approved by the board of directors (or equivalent management body) and signed by a director who can attest that steps have or have not been taken to ensure no slavery or human trafficking is occurring in the supply chain. Also, under the UK Act, the statement must be sent annually to the newly appointed Independent Anti-slavery Commissioner and published in a “prominent place” on its website homepage. In contrast, the California law does not require annual statements, only a single statement. California does not require a signature by a high ranking officer of the company. Duties under the California law are triggered by the annual gross receipts and industry code (i.e., retailer or manufacturer) a company cites on its state tax return. In contrast, the UK Act will apply to any company selling “goods or services” into the UK above the yet-to-be established turnover level.

How Will These Duties Be Enforced?

Both the California law and UK Act offer only injunction or performance of the statutory duties as the means of enforcement. It seems likely that California’s attorney general will be filing soon against some unfortunate company that has yet to post its SB 657 statement since it’s been three years since the requirement took effect and the AG’s enforcement role became active in early 2015. It also should be noted that there is no limit on remedies available for a violation of any other state or federal law, leaving some open questions as to whether, for example, the unfair business practices law in Section 17200, et seq., would be available to plaintiffs seeking to enforce this law’s disclosure provisions.

What Do Companies Selling into the California and UK Markets Need to Do Now?

Many companies prepared and posted their SB 657 compliance statements on their websites in late 2011 in anticipation of the law’s January 1, 2012, effective date. Now it is three years later, and many of those statements should be reviewed to determine whether improvements can be made to align the statements with the new AG Guide on best practices since the AG Guide sets the bar higher than the law established in 2010. The California AG’s office started its enforcement efforts in 2015 and is currently seeking voluntary submission of the statements via a [data survey on its website](#).

In addition to a review and update of their existing SB 657 statements, companies should be preparing for compliance with the UK Act’s requirements that currently have a provisional deadline of October 2015. For the next few months, companies should be looking for guidance that will be issued by the UK Secretary of State for clarification on the threshold and minimum required content for compliance and should be looking at the steps they have taken in the past year to ensure that no slavery or human trafficking has occurred in their supply chain.

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For more information on the detailed content of these regulations, to discuss compliance strategies or to begin preparing for what will be required, feel free to call any member of the Chemical & Product Regulation team listed below.

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