



Immigration Act 2016

2016 CHAPTER 19

PART 1

LABOUR MARKET AND ILLEGAL WORKING

CHAPTER 1

LABOUR MARKET

Director of Labour Market Enforcement

1 Director of Labour Market Enforcement

- (1) The Secretary of State must appoint a person as the Director of Labour Market Enforcement (referred to in this Chapter as “the Director”).
- (2) The Director is to hold office in accordance with the terms of his or her appointment.
- (3) The functions of the Director are exercisable on behalf of the Crown.
- (4) The Secretary of State must provide the Director with such staff, goods, services, accommodation and other resources as the Secretary of State considers the Director needs for the exercise of his or her functions.
- (5) The Secretary of State must—
 - (a) pay the Director such expenses, remuneration and allowances, and
 - (b) pay or make provision for the payment of such pension to or in respect of the Director,as may be provided for by or under the terms of the Director’s appointment.

2 Labour market enforcement strategy

- (1) The Director must before the beginning of each financial year prepare a labour market enforcement strategy for that year and submit it to the Secretary of State for approval.
- (2) A labour market enforcement strategy (referred to in this Chapter as a “strategy”) is a document which—
 - (a) sets out the Director’s assessment of—
 - (i) the scale and nature of non-compliance in the labour market during the year before the one to which the strategy relates, and
 - (ii) the likely scale and nature of such non-compliance during the year to which the strategy relates and the following two years,
 - (b) contains a proposal for the year to which the strategy relates setting out—
 - (i) how labour market enforcement functions should be exercised,
 - (ii) the education, training and research activities the Secretary of State, and any other person by whom, or by whose officers, labour market enforcement functions are exercisable, should undertake or facilitate in connection with those functions,
 - (iii) the information, or descriptions of information, that should be provided to the Director for the purposes of his or her functions by any person by whom, or by whose officers, labour market enforcement functions are exercisable, and
 - (iv) the form and manner in which, and frequency with which, that information should be provided,
 - (c) sets out the activities the Director proposes to undertake during the year to which the strategy relates in the exercise of his or her functions under section 8, and
 - (d) deals with such other matters as the Director considers appropriate.
- (3) The proposal mentioned in paragraph (b) of subsection (2) must, in particular, set out how the funding available for the purposes of the functions and activities mentioned in sub-paragraphs (i) and (ii) of that paragraph should be allocated.
- (4) The Director may at any time prepare a revised strategy and submit it to the Secretary of State for approval.
- (5) The Secretary of State may approve a strategy either with or without modifications (but a modification may not relate to the assessment described in paragraph (a) of subsection (2)).
- (6) Any person by whom labour market enforcement functions are exercisable during a year to which a strategy approved under this section relates must, in exercising those functions, have regard to the strategy.

3 Non-compliance in the labour market etc: interpretation

- (1) For the purposes of this Chapter each of the following constitutes “non-compliance in the labour market”—
 - (a) the commission of a labour market offence;
 - (b) failure to comply with the requirement under section 1 of the National Minimum Wage Act 1998 (workers to be paid at least national minimum wage);

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- (c) failure to pay any financial penalty required to be paid by a notice of underpayment served under section 19 of that Act (see section 19A of that Act);
 - (d) breach of a condition of a licence granted under section 7 of the Gangmasters (Licensing) Act 2004;
 - (e) failure to comply with any other requirement imposed by or under any enactment and which is prescribed by regulations made by the Secretary of State.
- (2) In this Chapter “labour market enforcement functions” means—
- (a) any function of the Secretary of State in connection with prohibition orders made under section 3A of the Employment Agencies Act 1973,
 - (b) any function of an officer acting for the purposes of that Act (see section 8A of that Act),
 - (c) any function of an officer acting for the purposes of the National Minimum Wage Act 1998 (see section 13 of that Act),
 - (d) any function of the Gangmasters and Labour Abuse Authority conferred by section 1(2)(a) to (c) of the Gangmasters (Licensing) Act 2004,
 - (e) any function of an enforcement officer or a compliance officer acting for the purposes of that Act (see section 15 of that Act),
 - (f) any function of the Gangmasters and Labour Abuse Authority under Part 2 of the Modern Slavery Act 2015 (slavery and trafficking prevention orders etc),
 - (g) any function of an officer of that Authority acting for the purposes of Part 1 or 2 of that Act (see sections 11A and 30A of that Act),
 - (h) any function of an enforcing authority under this Chapter,
 - (i) any function an officer has by virtue of section 26, and
 - (j) any other function prescribed by regulations made by the Secretary of State.
- (3) In this section “labour market offence” means—
- (a) an offence under the Employment Agencies Act 1973 other than one under section 9(4)(b) of that Act;
 - (b) an offence under the National Minimum Wage Act 1998;
 - (c) an offence under the Gangmasters (Licensing) Act 2004;
 - (d) an offence under section 1 of the Modern Slavery Act 2015;
 - (e) an offence under section 2 or 4 of that Act—
 - (i) which is committed in relation to a worker or a person seeking work, or
 - (ii) which is otherwise committed in circumstances where subsection (2) of section 3 of that Act applies;
 - (f) an offence under section 30(1) or (2) of that Act which is committed in relation to—
 - (i) an order which was made on the application of the Gangmasters and Labour Abuse Authority, or
 - (ii) an order which was made under section 14 of that Act and which falls within subsection (4) below;
 - (g) an offence under section 27;
 - (h) any other offence prescribed by regulations made by the Secretary of State;
 - (i) an offence of attempting or conspiring to commit an offence mentioned in paragraphs (a) to (h);

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- (j) an offence under Part 2 of the Serious Crime Act 2007 in relation to an offence so mentioned;
 - (k) an offence of inciting a person to commit an offence so mentioned;
 - (l) an offence of aiding, abetting, counselling or procuring the commission of an offence so mentioned.
- (4) An order made under section 14 of the Modern Slavery Act 2015 falls within this subsection if—
- (a) the order was made following—
 - (i) the conviction of the defendant of an offence mentioned in subsection (3)(d), (e) or (i) to (l), or
 - (ii) a finding of a kind mentioned in section 14(1)(b) or (c) of that Act in connection with any such offence, and
 - (b) the prosecution resulted from an investigation conducted by a labour abuse prevention officer (within the meaning of section 114B of the Police and Criminal Evidence Act 1984).
- (5) In this section “worker” has the same meaning as in the Employment Rights Act 1996 (see section 230 of that Act) and the reference to a person seeking work is to be read accordingly.
- (6) In this section references to the Gangmasters (Licensing) Act 2004 are references to that Act only so far as it applies in relation to England and Wales and Scotland.

4 Annual and other reports

- (1) As soon as reasonably practicable after the end of each financial year in respect of which the Secretary of State has approved a strategy under section 2, the Director must submit to the Secretary of State an annual report for that year.
- (2) An annual report must include—
- (a) an assessment of the extent to which labour market enforcement functions were exercised, and activities of the kind mentioned in section 2(2)(b)(ii) were carried out, in accordance with the strategy during the year to which the report relates,
 - (b) an assessment of the extent to which the strategy had an effect on the scale and nature of non-compliance in the labour market during that year, and
 - (c) a statement of the activities the Director undertook during that year in the exercise of his or her functions under section 8.
- (3) The Director must submit to the Secretary of State a report dealing with any matter—
- (a) which the Secretary of State has requested the Director to report on, or
 - (b) which a strategy approved by the Secretary of State under section 2 states is a matter the Director proposes to report on,
- and must do so as soon as reasonably practicable after the request is made or the strategy is approved.

5 Publication of strategy and reports

- (1) The Secretary of State must lay before Parliament—
- (a) any strategy the Secretary of State approves under section 2, and
 - (b) any annual or other report the Secretary of State receives under section 4,

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and must do so as soon as reasonably practicable after approving the strategy or receiving the report.

- (2) A document laid under subsection (1) must not contain material removed under subsection (3).
- (3) The Secretary of State may remove from a document to be laid under subsection (1) any material the publication of which the Secretary of State considers—
 - (a) would be against the interests of national security,
 - (b) might jeopardise the safety of any person in the United Kingdom, or
 - (c) might prejudice the investigation or prosecution of an offence under the law of England and Wales, Scotland or Northern Ireland.

6 Information gateways

- (1) A person may disclose information to the Director or a relevant staff member if the disclosure is made for the purposes of the exercise of any function of the Director.
- (2) Information obtained by the Director or a relevant staff member in connection with the exercise of any function of the Director may be used by the Director or a relevant staff member in connection with the exercise of any other function of the Director.
- (3) The Director or a relevant staff member may disclose information obtained in connection with the exercise of any function of the Director to a specified person if the disclosure is made for the purposes of the exercise of any function of the specified person.
- (4) “Specified person” means a person specified in Schedule 1 (persons to whom Director etc may disclose information).
- (5) The Secretary of State may by regulations amend Schedule 1.
- (6) In this section, “relevant staff member” means a member of staff provided to the Director under section 1(4).

7 Information gateways: supplementary

- (1) A disclosure of information which is authorised by section 6 does not breach—
 - (a) an obligation of confidence owed by the person making the disclosure, or
 - (b) any other restriction on the disclosure of information (however imposed).
- (2) But nothing in section 6 authorises the making of a disclosure which—
 - (a) contravenes the Data Protection Act 1998, or
 - (b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.
- (3) Section 6 does not limit the circumstances in which information may be disclosed apart from that section.
- (4) Section 6(1) does not authorise a person serving in an intelligence service to disclose information to the Director or a relevant staff member.

But this does not affect the disclosures which such a person may make in accordance with intelligence service disclosure arrangements.

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- (5) Intelligence service information may not be disclosed by the Director or a relevant staff member without authorisation from the appropriate service chief.
- (6) If the Director or a relevant staff member has disclosed intelligence service information to a person, that person may not further disclose that information without authorisation from the appropriate service chief.
- (7) HMRC information may not be disclosed by the Director or a relevant staff member without authorisation from HMRC Commissioners.
- (8) If the Director or a relevant staff member has disclosed HMRC information to a person, that person may not further disclose that information without authorisation from HMRC Commissioners.
- (9) Subsections (7) and (8) do not apply to national minimum wage information.
- (10) If a person contravenes subsection (7) or (8) by disclosing revenue and customs information relating to a person whose identity—
- (a) is specified in the disclosure, or
 - (b) can be deduced from it,
- section 19 of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure) applies in relation to that disclosure as it applies in relation to a disclosure of such information in contravention of section 20(9) of that Act.
- (11) In this section—
- “appropriate service chief” means—
- (a) the Director-General of the Security Service (in the case of information obtained by the Director or a relevant staff member from that Service or a person acting on its behalf);
 - (b) the Chief of the Secret Intelligence Service (in the case of information so obtained from that Service or a person acting on its behalf);
 - (c) the Director of GCHQ (in the case of information so obtained from GCHQ or a person acting on its behalf);
- “GCHQ” has the same meaning as in the Intelligence Services Act 1994;
- “HMRC information” means information disclosed to the Director or a relevant staff member under section 6 by HMRC Commissioners or a person acting on behalf of HMRC Commissioners;
- “intelligence service” means—
- (a) the Security Service;
 - (b) the Secret Intelligence Service;
 - (c) GCHQ;
- “intelligence service disclosure arrangements” means—
- (a) arrangements made by the Director-General of the Security Service under section 2(2)(a) of the Security Service Act 1989 about the disclosure of information by that Service,
 - (b) arrangements made by the Chief of the Intelligence Service under section 2(2)(a) of the Intelligence Services Act 1994 about the disclosure of information by that Service, and
 - (c) arrangements made by the Director of GCHQ under section 4(2)(a) of that Act about the disclosure of information by GCHQ;

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“intelligence service information” means information obtained from an intelligence service or a person acting on behalf of an intelligence service;

“national minimum wage information” means information obtained by an officer in the course of acting—

(a) for the purposes of the National Minimum Wage Act 1998 (see section 13 of that Act), or

(b) by virtue of section 26(2);

“relevant staff member” has the same meaning as in section 6;

“revenue and customs information relating to a person” has the meaning given in section 19(2) of the Commissioners for Revenue and Customs Act 2005.

8 Information hub

- (1) The Director must gather, store, process, analyse and disseminate information relating to non-compliance in the labour market.
- (2) The Director may request any person by whom, or by whose officers, labour market enforcement functions are exercisable to provide the Director with any non-compliance information specified or of a description specified in the request.
- (3) “Non-compliance information” means information relating to non-compliance in the labour market which the Director considers would facilitate the exercise of any of his or her functions.
- (4) A person by whom, or by whose officers, labour market enforcement functions are exercisable may request the Director to provide the person, or an officer of the person, with any enforcement information specified or of a description specified in the request.
- (5) “Enforcement information” means information which the person making the request considers would facilitate the exercise of any labour market enforcement function of the person or of an officer of the person.
- (6) A person who receives a request under this section must respond to it in writing within a reasonable period.

9 Restriction on exercising functions in relation to individual cases

- (1) The Director must not in exercising any function make any recommendation in relation to an individual case.
- (2) Subsection (1) does not prevent the Director considering individual cases and drawing conclusions about them for the purpose of, or in the context of, considering a general issue.