



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.

Gangmasters and Labour Abuse Authority

10 Renaming of Gangmasters Licensing Authority

- (1) The Gangmasters Licensing Authority is renamed the Gangmasters and Labour Abuse Authority.

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- (2) In any enactment passed before the day on which this section comes into force, and in any instrument or other document made before that day, references to the Gangmasters Licensing Authority are to be read, in relation to any time on or after that day, as references to the Gangmasters and Labour Abuse Authority.

11 Functions in relation to labour market

- (1) Schedule 2 (functions in relation to labour market) has effect.
- (2) The Secretary of State may by regulations confer other functions on the Gangmasters and Labour Abuse Authority or its officers.

12 PACE powers in England and Wales for labour abuse prevention officers

- (1) After section 114A of the Police and Criminal Evidence Act 1984 insert—

“114B Application of Act to labour abuse prevention officers

- (1) The Secretary of State may by regulations apply any provision of this Act which relates to investigations of offences conducted by police officers to investigations of labour market offences conducted by labour abuse prevention officers.
- (2) The regulations may apply provisions of this Act with any modifications specified in the regulations.
- (3) In this section “labour abuse prevention officer” means an officer of the Gangmasters and Labour Abuse Authority who—
- (a) falls within subsection (4), and
 - (b) is authorised (whether generally or specifically) by the Secretary of State for the purposes of this section.
- (4) An officer of the Gangmasters and Labour Abuse Authority falls within this subsection if he or she is—
- (a) acting for the purposes of the Employment Agencies Act 1973 (see section 8A of that Act),
 - (b) acting for the purposes of the National Minimum Wage Act 1998 (see section 13 of that Act),
 - (c) acting for the purposes of the Gangmasters (Licensing) Act 2004 as an enforcement officer within the meaning of section 15 of that Act,
 - (d) acting for the purposes of Part 1 or 2 of the Modern Slavery Act 2015 (see sections 11A and 30A of that Act), or
 - (e) acting for any other purpose prescribed in regulations made by the Secretary of State.
- (5) The investigations for the purposes of which provisions of this Act may be applied by regulations under this section include investigations of offences committed, or suspected of having been committed, before the coming into force of the regulations or of this section.
- (6) Regulations under this section are to be made by statutory instrument.
- (7) Regulations under this section may make—

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- (a) different provision for different purposes;
 - (b) provision which applies generally or for particular purposes;
 - (c) incidental, supplementary, consequential, transitional or transitory provision or savings.
- (8) Regulations under subsection (4)(e) may, in particular, make such provision amending, repealing or revoking any enactment as the Secretary of State considers appropriate in consequence of any provision made by the regulations.
- (9) A statutory instrument containing regulations under subsection (4)(e) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (10) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) In this section—
“enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
“labour market offence” has the meaning given in section 3 of the Immigration Act 2016.”
- (2) In section 18 of the Gangmasters (Licensing) Act 2004 (obstruction of officers), in subsection (1)(a), after “this Act” insert “or functions conferred by virtue of section 114B of the Police and Criminal Evidence Act 1984 (application of that Act to Authority officers)”.

13 Relationship with other agencies: requests for assistance

- (1) The Gangmasters (Licensing) Act 2004 is amended as follows.
- (2) Before section 23 (but after the italic heading before it) insert—

“22A Relationship with other agencies: requests for assistance

- (1) The Authority may request any of the following to provide assistance to the Authority or any of its officers—
 - (a) a chief officer of police for a police area in England and Wales;
 - (b) the Director General of the National Crime Agency;
 - (c) a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971;
 - (d) any other person prescribed or of a prescribed description.
- (2) The Authority may make a request under subsection (1) only if it considers that the assistance would facilitate the exercise of any function by the Authority or any of its officers.
- (3) Any of the following persons may request the Authority to provide assistance to the person—
 - (a) a chief officer of police for a police area in England and Wales;

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- (b) a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971;
 - (c) any other person prescribed or of a prescribed description.
- (4) A person may make a request under subsection (3) only if the person considers that the assistance would facilitate the exercise by the person of any function.
- (5) A request under this section must—
- (a) set out what assistance is being requested, and
 - (b) explain how the assistance would facilitate the exercise of the function.
- (6) A person who receives a request under this section must respond to it in writing within a reasonable period.
- (7) Regulations under this section must not make provision which would be—
- (a) within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament,
 - (b) within the legislative competence of the National Assembly for Wales if contained in an Act of that Assembly, or
 - (c) within the legislative competence of the Northern Ireland Assembly if contained in an Act of that Assembly made without the consent of the Secretary of State.”
- (3) In section 25 (regulations, rules and orders), in subsection (5)—
- (a) omit the “or” at the end of paragraph (a);
 - (b) at the end insert “, or
 - (c) section 22A(1)(d) or (3)(c) (regulations regarding persons whom the Authority may request to provide assistance and who may request assistance from Authority).”

Labour market enforcement undertakings

14 Power to request LME undertaking

- (1) This section applies where an enforcing authority believes that a person has committed, or is committing, a trigger offence.
- (2) An enforcing authority may give a notice to the person—
- (a) identifying the trigger offence which the authority believes has been or is being committed;
 - (b) giving the authority’s reasons for the belief;
 - (c) inviting the person to give the authority a labour market enforcement undertaking in the form attached to the notice.
- (3) A labour market enforcement undertaking (an “LME undertaking”) is an undertaking by the person giving it (the “subject”) to comply with any prohibitions, restrictions and requirements set out in the undertaking (as to which see section 15).
- (4) “Trigger offence” means—
- (a) an offence under the Employment Agencies Act 1973 other than one under section 9(4)(b) of that Act;

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- (b) an offence under the National Minimum Wage Act 1998;
 - (c) an offence under the Gangmasters (Licensing) Act 2004;
 - (d) any other offence prescribed by regulations made by the Secretary of State;
 - (e) an offence of attempting or conspiring to commit an offence mentioned in paragraphs (a) to (d);
 - (f) an offence under Part 2 of the Serious Crime Act 2007 in relation to an offence so mentioned;
 - (g) an offence of inciting a person to commit an offence so mentioned;
 - (h) an offence of aiding, abetting, counselling or procuring the commission of an offence so mentioned.
- (5) “Enforcing authority”—
- (a) in relation to a trigger offence under the Employment Agencies Act 1973, means the Secretary of State or any authority whose officers are acting for the purposes of that Act (see section 8A of that Act);
 - (b) in relation to a trigger offence under the National Minimum Wage Act 1998, means the Secretary of State or any authority whose officers are acting for the purposes of that Act (see section 13 of that Act);
 - (c) in relation to a trigger offence under the Gangmasters (Licensing) Act 2004, means the Secretary of State or any authority whose officers are acting as enforcement officers for the purposes of that Act (see section 15 of that Act);
 - (d) in relation to an offence which is a trigger offence by virtue of subsection (4)(d) (including an offence mentioned in subsection (4)(e) to (h) in connection with such an offence), has the meaning prescribed in regulations made by the Secretary of State.
- (6) In subsection (5), a reference to an offence under an Act includes a reference to an offence mentioned in subsection (4)(e) to (h) in connection with such an offence.
- (7) 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.

15 Measures in LME undertakings

- (1) An LME undertaking may include a prohibition, restriction or requirement (each a “measure”) if, and only if—
- (a) the measure falls within subsection (2) or (3) (or both), and
 - (b) the enforcing authority considers that the measure is just and reasonable.
- (2) A measure falls within this subsection if it is for the purpose of—
- (a) preventing or reducing the risk of the subject not complying with any requirement imposed by or under the relevant enactment, or
 - (b) bringing to the attention of persons likely to be interested in the matter—
 - (i) the existence of the LME undertaking,
 - (ii) the circumstances in which it was given, and
 - (iii) any action taken (or not taken) by the subject in order to comply with the undertaking.
- (3) A measure falls within this subsection if it is prescribed, or is of a description prescribed, in regulations made by the Secretary of State.
- (4) The enforcing authority must not—

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- (a) invite the subject to give an LME undertaking, or
 - (b) agree to the form of an undertaking,
- unless the authority believes that at least one measure in the undertaking is necessary for the purpose mentioned in subsection (5).
- (5) That purpose is preventing or reducing the risk of the subject—
 - (a) committing a further trigger offence under the relevant enactment, or
 - (b) continuing to commit the trigger offence.
 - (6) An LME undertaking must set out how each measure included for the purpose mentioned in subsection (2)(a) is expected to achieve that purpose.
 - (7) In this section, the “relevant enactment” means the enactment under which the enforcing authority believes the trigger offence concerned has been or is being committed.

16 Duration

- (1) An LME undertaking has effect from when it is accepted by the enforcing authority or from the later time specified in it for this purpose.
- (2) An LME undertaking has effect for the period specified in it but the maximum period for which an undertaking may have effect is 2 years.
- (3) The enforcing authority may release the subject from an LME undertaking.
- (4) The enforcing authority must release the subject from an LME undertaking if at any time during the period for which it has effect the authority believes that no measure in it is necessary for the purpose mentioned in section 15(5).
- (5) If the enforcing authority releases the subject from an LME undertaking it must take such steps as it considers appropriate to bring that fact to the attention of—
 - (a) the subject;
 - (b) any other persons likely to be interested in the matter.

17 Further provision about giving notice under section 14

- (1) A notice may be given under section 14 to a person by—
 - (a) delivering it to the person,
 - (b) leaving it at the person’s proper address,
 - (c) sending it by post to the person at that address, or
 - (d) subject to subsection (6), sending it to the person by electronic means.
- (2) A notice to a body corporate may be given to any officer of that body.
- (3) A notice to a partnership may be given to any partner.
- (4) A notice to an unincorporated association (other than a partnership) may be given to any member of the governing body of the association.
- (5) For the purposes of this section and of section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of a person is the person’s last known address (whether of the person’s residence or of a place where the person carries on business or is employed) and also—

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- (a) in the case of a body corporate or an officer of the body, the address of the body's registered or principal office in the United Kingdom;
 - (b) in the case of a partnership or a partner, the address of the principal office of the partnership in the United Kingdom;
 - (c) in the case of an unincorporated association (other than a partnership) or a member of its governing body, the principal office of the association in the United Kingdom.
- (6) A notice may be sent to a person by electronic means only if—
- (a) the person has indicated that notices under section 14 may be given to the person by being sent to an electronic address and in an electronic form specified for that purpose, and
 - (b) the notice is sent to that address in that form.
- (7) A notice sent to a person by electronic means is, unless the contrary is proved, to be treated as having been given on the working day immediately following the day on which it was sent.
- (8) In this section—
- “electronic address” means any number or address used for the purposes of sending or receiving documents or information by electronic means;
 - “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body;
 - “working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

Labour market enforcement orders

18 Power to make LME order on application

- (1) The appropriate court may, on an application by an enforcing authority under section 19, make a labour market enforcement order against a person if the court—
- (a) is satisfied, on the balance of probabilities, that the person has committed, or is committing, a trigger offence, and
 - (b) considers that it is just and reasonable to make the order.
- (2) A labour market enforcement order (an “LME order”) is an order which—
- (a) prohibits or restricts the person against whom it is made (“the respondent”) from doing anything set out in the order;
 - (b) requires the respondent to do anything set out in the order.
- See section 21.
- (3) In this section “the appropriate court”—
- (a) where the conduct constituting the trigger offence took or is taking place primarily in England and Wales, means a magistrates' court;
 - (b) where that conduct took or is taking place primarily in Scotland, means the sheriff;
 - (c) where that conduct took or is taking place primarily in Northern Ireland, means a court of summary jurisdiction.

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- (4) An application for an LME order under this section is—
- (a) in England and Wales, to be made by complaint;
 - (b) in Northern Ireland, to be made by complaint under Part 8 of the Magistrates' Courts (Northern Ireland) Order 1981 ([S.I. 1981/1675 \(N.I. 26\)](#)).

19 Applications

- (1) An enforcing authority may apply for an LME order to be made under section 18 against a person (the “proposed respondent”) if—
- (a) the authority has served a notice on the proposed respondent under section 14, and
 - (b) the proposed respondent—
 - (i) refuses to give an LME undertaking, or
 - (ii) otherwise fails, before the end of the negotiation period, to give an LME undertaking in the form attached to the notice or in such other form as may be agreed with the enforcing authority.
- (2) An enforcing authority may also apply for an LME order if the proposed respondent—
- (a) has given an LME undertaking to the enforcing authority, and
 - (b) has failed to comply with the undertaking.
- (3) In subsection (1) “the negotiation period” means—
- (a) the period of 14 days beginning with the day after that on which the notice mentioned in paragraph (a) of that subsection was given, or
 - (b) such longer period as may be agreed between the enforcing authority and the proposed respondent.

20 Power to make LME order on conviction

- (1) This section applies where a court deals with a person in respect of a conviction for a trigger offence.
- (2) The court may make an LME order against the person if the court considers it is just and reasonable to do so.
- (3) An LME order must not be made under this section except—
- (a) in addition to a sentence imposed in respect of the offence concerned, or
 - (b) in addition to an order discharging the person conditionally or, in Scotland, discharging the person absolutely.

21 Measures in LME orders

- (1) An LME order may include a prohibition, restriction or requirement (each a “measure”) if, and only if, the measure falls within subsection (2) or (3) (or both).
- (2) A measure falls within this subsection if it is for the purpose of—
- (a) preventing or reducing the risk of the respondent not complying with any requirement imposed by or under the relevant enactment, or
 - (b) bringing to the attention of persons likely to be interested in the matter—
 - (i) the existence of the LME order,
 - (ii) the circumstances in which it was made, and

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(iii) any action taken (or not taken) by the respondent in order to comply with the order.

- (3) A measure falls within this subsection if it is prescribed, or is of a description prescribed, in regulations made by the Secretary of State.
- (4) Where an LME order includes a measure for the purpose mentioned in subsection (2) (a), the order must set out how the measure is expected to achieve that purpose.
- (5) In this section the “relevant enactment” means the enactment under which the trigger offence concerned has been or is being committed.

22 Further provision about LME orders

- (1) An LME order has effect for the period specified in it but the maximum period for which an order may have effect is 2 years.
- (2) An LME order may not be made against an individual who is under 18.
- (3) If a court makes an LME order, the court may also—
 - (a) release the respondent from any LME undertaking given in relation to the trigger offence concerned;
 - (b) discharge any other LME order which is in force against the respondent and which was made by the court or any other court in the same part of the United Kingdom as the court.

23 Variation and discharge

- (1) The appropriate court may by order vary or discharge an LME order—
 - (a) on the application of the respondent;
 - (b) if the order was made under section 18, on the application of the enforcing authority who applied for the order;
 - (c) if the order was made under section 20, on the application of the enforcing authority whose officer conducted the investigation which resulted in the prosecution of the respondent for the trigger offence.
- (2) In this section “the appropriate court”—
 - (a) in relation to an LME order made in England and Wales (whether made under section 18 or 20), means a magistrates’ court;
 - (b) in relation to such an order made in Scotland, means the sheriff;
 - (c) in relation to such an order made in Northern Ireland, means a court of summary jurisdiction.
- (3) An application for an order under this section is—
 - (a) if made to a magistrates’ court in England and Wales, to be made by complaint;
 - (b) if made to a court of summary jurisdiction in Northern Ireland, to be made by complaint under Part 8 of the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).

24 Appeals

- (1) A respondent may appeal against—
 - (a) the making of an LME order under section 18;

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- (b) the making of, or refusal to make, an order under section 23.
- (2) An appeal under subsection (1) is to be made—
 - (a) where the order was made or refused by a magistrates’ court in England and Wales, to the Crown Court;
 - (b) where the order was made or refused by the sheriff, to the Sheriff Appeal Court;
 - (c) where the order was made or refused by a court of summary jurisdiction in Northern Ireland, to a county court.
- (3) On an appeal under subsection (1) the court hearing the appeal may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just and reasonable.
- (4) An LME order that has been varied by virtue of subsection (3) remains an order of the court that first made it for the purposes of section 23.
- (5) A respondent may appeal against the making of an LME order under section 20 as if the order were a sentence passed on the respondent for the trigger offence.

LME undertakings and orders: supplementary

25 Code of practice

- (1) The Secretary of State must issue a code of practice giving guidance to enforcing authorities about the exercise of their functions under sections 14 to 23.
- (2) The Secretary of State may revise the code from time to time.
- (3) The code and any revised code—
 - (a) must not be issued unless a draft has been laid before Parliament, and
 - (b) comes into force on such day as the Secretary of State appoints by regulations.
- (4) The Secretary of State must publish the code and any revised code.
- (5) An enforcing authority must have regard to the current version of the code in exercising its functions under sections 14 to 23.

26 Investigative functions

- (1) An officer acting for the purposes of the Employment Agencies Act 1973—
 - (a) may also act for the purposes of taking action where it appears that a person has failed to comply with an LME undertaking or an LME order where the trigger offence to which the undertaking or order relates is an offence under that Act, and
 - (b) in doing so, has the same powers and duties as he or she has when acting for the purposes of that Act.
- (2) An officer acting for the purposes of the National Minimum Wage Act 1998—
 - (a) may also act for the purposes of taking action where it appears that a person has failed to comply with an LME undertaking or an LME order where the trigger offence to which the undertaking or order relates is an offence under that Act, and

- (b) in doing so, has the same powers and duties as he or she has when acting for the purposes of that Act.
- (3) An officer acting as an enforcement officer for the purposes of the Gangmasters (Licensing) Act 2004—
- (a) may also act for the purposes of taking action where it appears that a person has failed to comply with an LME undertaking or an LME order where the trigger offence to which the undertaking or order relates is an offence under that Act, and
 - (b) in doing so, has the same powers and duties as he or she has when acting as an enforcement officer for the purposes of that Act.
- (4) 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.

27 Offence

- (1) A person against whom an LME order is made commits an offence if the person, without reasonable excuse, fails to comply with the order.
- (2) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, to a fine or to both;
 - (b) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months, to a fine or to both;
 - (c) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both;
 - (d) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months, to a fine not exceeding the statutory maximum or to both.
- (3) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (2)(b) to 12 months is to be read as a reference to 6 months.

28 Offences by bodies corporate

- (1) If an offence under section 27 committed by a body corporate is proved—
- (a) to have been committed with the consent or connivance of an officer of the body, or
 - (b) to be attributable to any neglect on the part of such an officer,
- the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) In subsection (1) “officer”, in relation to a body corporate, means—
- (a) a director, manager, secretary or other similar officer of the body;
 - (b) a person purporting to act in any such capacity.
- (3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as if the member were a director of the body corporate.

29 Application to unincorporated associations

- (1) In a case falling within subsection (2), an unincorporated association is to be treated as a legal person for the purposes of sections 14 to 27.
- (2) A case falls within this subsection if it relates to a trigger offence for which it is possible to bring proceedings against an unincorporated association in the name of the association.
- (3) Proceedings for an offence under section 27 alleged to have been committed by an unincorporated association may be brought against the association in the name of the association.
- (4) For the purposes of such proceedings—
 - (a) rules of court relating to the service of documents have effect as if the association were a body corporate, and
 - (b) the following provisions apply as they apply in relation to a body corporate—
 - (i) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates’ Courts Act 1980;
 - (ii) sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995;
 - (iii) section 18 of the [Criminal Justice Act \(Northern Ireland\) 1945 \(c. 15 \(N.I.\)\)](#) and Schedule 4 to the Magistrates’ Courts (Northern Ireland) Order 1981 ([S.I. 1981/1675 \(N.I. 26\)](#)).
- (5) A fine imposed on the association on its conviction of an offence is to be paid out of the funds of the association.
- (6) If an offence under section 27 committed by an unincorporated association is proved—
 - (a) to have been committed with the consent or connivance of an officer of the association, or
 - (b) to be attributable to any neglect on the part of such an officer,
 the officer, as well as the association, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (7) In subsection (6) “officer”, in relation to any association, means—
 - (a) an officer of the association or a member of its governing body;
 - (b) a person purporting to act in such a capacity.

30 Application to partnerships

- (1) If an offence under section 27 committed by a partner of a partnership which is not regarded as a legal person is shown—
 - (a) to have been committed with the consent or connivance of another partner, or
 - (b) to be attributable to any neglect on the part of another partner,
 that other partner, as well as the first-mentioned partner, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Proceedings for an offence under section 27 alleged to have been committed by a partnership which is regarded as a legal person may be brought against the partnership in the firm name.
- (3) For the purposes of such proceedings—

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- (a) rules of court relating to the service of documents have effect as if the partnership were a body corporate, and
 - (b) the following provisions apply as they apply in relation to a body corporate—
 - (i) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates’ Courts Act 1980;
 - (ii) sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995;
 - (iii) section 18 of the [Criminal Justice Act \(Northern Ireland\) 1945 \(c. 15 \(N.I.\)\)](#) and Schedule 4 to the Magistrates’ Courts (Northern Ireland) Order 1981 ([S.I. 1981/1675 \(N.I. 26\)](#)).
- (4) A fine imposed on a partnership on its conviction of an offence is to be paid out of the funds of the partnership.
- (5) If an offence under section 27 committed by a partnership is proved—
 - (a) to have been committed with the consent or connivance of a partner, or
 - (b) to be attributable to any neglect on the part of a partner,the partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (6) In subsections (1) and (5) “partner” includes a person purporting to act as a partner.
- (7) For the purposes of this section a partnership is, or is not, “regarded as a legal person” if it is, or is not, so regarded under the law of the country or territory under which it was formed.

Supplementary provision

31 Consequential and related amendments

Schedule 3 (consequential and related amendments) has effect.

32 Regulations under Chapter 1

- (1) Regulations under section 3 or 14 must not prescribe a requirement, function or offence if provision imposing the requirement, conferring the function or creating the offence falls within subsection (3).
- (2) Regulations under section 11 must not confer a function if provision doing so falls within subsection (3).
- (3) Provision falls within this subsection if—
 - (a) it would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament,
 - (b) it would be within the legislative competence of the National Assembly for Wales if contained in an Act of that Assembly, or
 - (c) it would be within the legislative competence of the Northern Ireland Assembly if contained in an Act of that Assembly made without the consent of the Secretary of State.
- (4) Regulations under section 3, 11 or 14 may make such provision amending, repealing or revoking any provision of any enactment, including this Chapter, as the Secretary of State considers appropriate in consequence of the regulations.

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33 Interpretation of Chapter 1

In this Chapter—

“the Director” has the meaning given by section 1;

“enactment” includes—

- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
- (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;
- (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;

“enforcing authority” has the meaning given by section 14;

“financial year” means a period of 12 months ending with 31 March;

“HMRC Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“labour market enforcement functions” has the meaning given by section 3;

“LME order” has the meaning given by section 18;

“LME undertaking” has the meaning given by section 14;

“non-compliance in the labour market” has the meaning given by section 3;

“the respondent” has the meaning given by section 18;

“strategy” has the meaning given by section 2;

“subject” has the meaning given by section 14;

“trigger offence” has the meaning given by section 14.