

EXPLANATORY MEMORANDUM TO

THE LABOUR MARKET ENFORCEMENT (CODE OF PRACTICE ON LABOUR MARKET ENFORCEMENT UNDERTAKINGS AND ORDERS: APPOINTED DAY) REGULATIONS 2016

2016 No. 1044

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The instrument brings into force the code of practice entitled “Code of Practice on Labour Market Enforcement undertakings and orders” which was laid before Parliament by the Secretary of State on 31st October 2016.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This instrument brings into force the code of practice entitled “Code of Practice on Labour Market Enforcement undertakings and orders” issued under section 25(1) of the Immigration Act 2016.

5. Extent and Territorial Application

- 5.1 The instrument extends to the United Kingdom.
5.2 The instrument applies to the United Kingdom.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The Immigration Act 2016 creates a new regime of Labour Market Enforcement undertakings and orders to address exploitation by employers which falls between routine breaches or administrative errors and the most serious modern slavery offences at the other end of the scale. Several key labour market offences are

currently punishable by a civil penalty or criminal fine, and employers are treating these sanctions as business overheads and failing to take remedial action.

- 7.2 The new regime may be used by the Gangmasters and Labour Abuse Authority, HMRC's National Minimum Wage enforcement and the Employment Agency Standards Inspectorate where they believe that a business has committed a trigger offence from a range of offences within the Gangmasters (Licensing) Act 2004, the National Minimum Wage Act 1998 or the Employment Agencies Act 1973. These enforcing authorities can request that a business gives a Labour Market Enforcement (LME) undertaking to take practical steps to correct the non-compliant behaviour. Where these steps are not taken or the business refuses to give an undertaking, the enforcing authority can apply to the court for a LME order. A court can also make an LME order when sentencing for a trigger offence. A business can be prosecuted for breach of an LME order. The maximum penalty is a two year custodial sentence and/or an unlimited fine.
- 7.3 In order to ensure sustained compliance, an undertaking or order can remain in place for as long as the measures in it are necessary to prevent or reduce the risk of the business committing a further trigger offence, up to a maximum of two years. Measures in an undertaking or order can include any prohibition, requirement or restriction which either prevents or reduces the risk of a trigger offence being committed or brings the undertaking or order to the attention of interested parties. The new regime can be used alongside existing sanctions and is aimed at more serious or repeat offenders.
- 7.4 The new powers will be available in England, Wales and Scotland, and in respect of national minimum wage offences in Northern Ireland. Each enforcing authority can seek undertakings, apply for orders and investigate offences in their own area of legislation. Additionally, in accordance with their expanded role, officers of the GLAA who have undergone specialist training will be able to use the new powers across the range of trigger offences.
- 7.5 The Secretary of State must issue a code of practice giving guidance to the enforcing authorities in the exercise of their functions under sections 14 to 23 of the Immigration Act 2016. The enforcing authorities must have regard to the current version of the code in exercising those functions. The code: sets the context for the regime in respect of the existing powers available to the three enforcement bodies and the progression the regime provides in enforcing compliance; sets the standards for implementation of the regime, including the roles of the enforcing authorities and approach to joint working; details the factors to be considered when seeking an undertaking; details the process for issue and monitoring of a release from an undertaking and explains the process for LME orders including standard of proof, scope and jurisdiction.

Consolidation

- 7.6 As this is the first instrument to be made under the enabling power, the issue of consolidation does not arise.

8. Consultation outcome

- 8.1 The Home Office and Department for Business, Innovation and Skills held a joint consultation on exploitation in the labour market from 13 October to 7 December 2015. This sought views on the Government's proposals for enhancing the capability

of the existing framework to deal with individuals and businesses that breach labour market regulation. 93 responses were received, from a wide range of respondents including trade bodies/business representative organisations, labour providers, charities, academia, business, local and central government and trade unions. Alongside the consultation, the Government held two stakeholder events to listen to the views of business and non-governmental organisations about the proposals.

- 8.2 The Government received support for the proposals set out in the consultation, including the creation of a new offence of aggravated labour law breach to provide a deterrent against exploitative employment practices. In particular, there was support for a new type of improvement notice to provide an opportunity for remedial action at an early stage, backed up with the threat of prosecution if action was not taken. The Government's response can be viewed at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/491260/BIS-16-11-government-response-to-tackling-exploitation-in-the-labour-market.pdf

9. Guidance

- 9.1 In using Labour Market Enforcement undertakings and orders, the enforcing authorities will have regard to their published enforcement strategies.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is minimal and is related to familiarisation with the guidance in the Code of Practice.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The provisions of the 2016 Act and, by extension, the provisions of these Regulations, will be subject to the normal post-legislative review three to five years after Royal Assent. In addition, the Director of Labour Market Enforcement will lay before Parliament each year a report on the performance of the enforcing authorities against the annual strategy.

13. Contact

- 13.1 Sue Harling at the Home Office Telephone: 0207 035 6955 or email: sue.harling@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.