

EXPLANATORY MEMORANDUM TO
THE POLICE AND CRIMINAL EVIDENCE ACT 1984 (APPLICATION TO
LABOUR ABUSE PREVENTION OFFICERS) REGULATIONS 2017

2017 No. 520

AND

THE GANGMASTERS AND LABOUR ABUSE AUTHORITY (COMPLAINTS AND
MISCONDUCT) REGULATIONS 2017

2017 No. 521

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 Police and Criminal Evidence Act 1984 (Application to Labour Abuse Prevention Officers) Regulations 2017 (“the PACE Regulations”) apply provisions of the Police and Criminal Evidence Act 1984 (“PACE”) to officers of the Gangmasters Labour Abuse Authority (“the GLAA”) who have been authorised to act as Labour Abuse Prevention Officers (LAPOs) when investigating labour market offences.
- 2.2 The Gangmasters and Labour Abuse Authority (Complaints and Misconduct) Regulations 2017 (“the IPCC Regulations”) confer functions on the Independent Police Complaints Commission (“the Commission”) in relation to the exercise of functions by officers of the GLAA in their capacity as LAPOs.

3. Matters of special interest to Parliament

Matters of interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As both instruments are subject to the negative procedure and have 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 The Immigration Act 2016 (“the 2016 Act”) created the statutory role of Director of Labour Market Enforcement and the new regime of Labour Market Enforcement undertakings and orders to strengthen the approach to enforcing labour market legislation to better prevent the exploitation of workers. It also reformed the Gangmasters Licensing Authority into the GLAA to reflect its expanded role in tackling serious cases of worker exploitation across the economy.

The PACE Regulations

- 4.2 Section 114B of PACE, inserted by section 12 of the 2016 Act, enables certain officers of the GLAA to be authorised to act as LAPOs to create a new capability within the GLAA to undertake investigations of a range of labour market offences relating to the maltreatment of workers. Under section 114B of PACE, LAPOs are persons who have been authorised by the Secretary of State and who are acting for the purposes of the Employment Agencies Act 1973, the National Minimum Wage Act 1988, the Gangmasters (Licensing) Act 2004 as an enforcement officer, or Part 1 or 2 of the Modern Slavery Act 2015, or for any other purpose prescribed in regulations made by the Secretary of State.
- 4.3 PACE provides for the core powers of the police to investigate criminal offences, including powers to stop and search persons, powers of entry, search and seizure, and powers of arrest and detention. The PACE Regulations apply certain provisions of PACE to investigations of labour market offences undertaken by LAPOs to ensure LAPOs have the requisite investigative powers to deal effectively with serious cases of worker exploitation.

The IPCC Regulations

- 4.4 The Commission was established by the Police Reform Act 2002 (“the 2002 Act”) to provide an effective and independent means of overseeing the investigation of complaints and misconduct relating to the actions of the police. The Commission’s remit has since been extended to other organisations that exercise police powers, which now includes officers of the GLAA in their capacity as LAPOs.
- 4.5 Section 10 of the 2002 Act, as amended by paragraphs 10 and 11 of Schedule 3 to the 2016 Act, provides that the functions of the Commission include securing the maintenance of suitable arrangements with respect to (i) the handling of complaints made about the conduct of LAPOs, (ii) the recording of matters from which it appears there may have been conduct by LAPOs which constitutes or involves the commission of a criminal offence or behaviour justifying disciplinary proceedings, (iii) the recording of matters from which it appears that a person has died or suffered serious injury during, or following, contact with a LAPO, and (iv) the manner in which such complaints and matters are handled. Section 26D of the 2002 Act, as inserted by paragraph 12 of Schedule 3 to the 2016 Act, allows the Secretary of State to make regulations conferring functions on the Commission in relation to the exercise of functions by officers of the GLAA in their capacity as LAPOs.
- 4.6 The IPCC Regulations run in parallel to the PACE Regulations and set out the framework for handling complaints, conduct matters and DSI matters relating to LAPOs.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

- 6.1 As both instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The labour market enforcement provisions in the 2016 Act are designed to strengthen our ability across government to detect and deal with employers and employment agencies who are exploiting workers by breaching national minimum wage and other legislation. The creation of the roles of the Director of Labour Market Enforcement and LAPOs and the expanded remit of the GLAA are key components of this work that ensure there is a more coordinated, targeted and evidence-based approach to tackling exploitation in the labour market, including modern slavery.
- 7.2 The GLAA is one of the three main enforcement bodies, which through its licensing scheme regulates businesses that provide workers to the fresh produce supply chain and horticulture industry, to make sure they meet the employment standards required by law. In doing this, the GLAA works in partnership with the police, the NCA and other law enforcement agencies to protect vulnerable and exploited workers. Under its new remit, the GLAA, through its new LAPO role, will continue to work closely with these partners, but it is critical for them to have the equivalent powers of these agencies, so that they can act independently and more swiftly wherever they find evidence of potential offences and exploitation.
- 7.3 The main provisions of PACE relating to entry, search and seizure under a judicial warrant and to arrest and search of a person are applied to LAPOs by the PACE Regulations, but those provisions are modified so that they are appropriate to the operational context in which LAPOs work in relation to the investigation of labour market offences. These powers will allow LAPOs to take immediate action when investigating labour market offences rather than having to wait for and rely on the assistance of the other agencies, during which time the opportunity to secure evidence that may identify criminal offences, vulnerable victims, including victims of modern slavery may be lost or even destroyed.
- 7.4 Ensuring oversight of LAPOs by the Commission under the IPCC Regulations provides a necessary safeguard to ensure that LAPOs are exercising their powers proportionately. The IPCC Regulations are similar to the regulations which already give the Commission oversight of officers of other agencies who may exercise quasi-policing powers (e.g. officers of the National Crime Agency).
- 7.5 The IPCC Regulations set out the circumstances, including timescales, in which complaints and matters should be referred to the Commission and give the Commission the power to determine the form of investigation (if it decides an investigation should take place) following a referral from the GLAA. The forms which an investigation may take are: an investigation by the Commission itself, an investigation managed by Commission, an investigation supervised by the Commission, and an investigation by the Chief Executive of the GLAA. The IPCC Regulations also provide the circumstances in which appeals relating to the handling of a complaint can be brought.
- 7.6 The Chief Executive has a duty to record all complaints, to notify the Commission when he or she receives a complaint or becomes aware of a conduct matter or DSI matter relating to a LAPO and to keep a complainant informed

- 7.7 The new powers under the PACE Regulations will be available in England and Wales and oversight of the use of those powers by the Commission under the IPCC Regulations will run in parallel to this.

Consolidation

- 7.8 As these instruments are the first to be made under the enabling power, the issue of consolidation does not arise.

8. Consultation outcome

The PACE Regulations

- 8.1 The Home Office and the Department for Business Energy and Industry Strategy (formerly the 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. It included proposals to give the GLAA police style powers as part of its expanded remit that would be counterbalanced by effective independent oversight. 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 plans to expand the remit of the Gangmasters Licensing Authority to enable it to tackle exploitation across the economy and in relation to all workers, whether employed through an agency, gangmaster or direct employer. 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

The IPCC Regulations

- 8.3 The Home Office also consulted the Commission, the Police Advisory Board ("the PAB"), the National Police Chiefs' Council, the Association of Police and Crime Commissioners, the Mayor's Office for Policing and Crime on a draft of the IPCC Regulations from 10 February 2017 to 17 March 2017. This fulfilled the statutory requirements under section 24 of the 2002 Act and section 63 of the Police Act 1996 which set out that before making regulations Secretary of State must consult with the specified people and bodies and must supply the PAB with a draft of the regulations and take into consideration any representations made by the Board.
- 8.4 The Home Office received a consolidated response from the PAB on behalf of the police and police related statutory organisations and a separate response from the Commission. The Home Office took into account all representations made and several changes were made to the draft regulations as a result.

9. Guidance

- 9.1 LAPOs will be authorised by the Secretary of State, subject to training in the use of their PACE powers to the College of Policing Standards and will have a duty under section 67(9) of PACE to have regard to any relevant PACE codes of practice when

exercising their powers. The PACE codes of practice have been laid before Parliament and are available at:
<https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice>.

- 9.2 The GLAA will also produce internal operational guidance for officers who will be authorised to act as LAPOs.

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 PACE Regulations and the IPCC Regulations.
- 10.3 Impact Assessments have not been prepared for these instruments.

11. Regulating small business

- 11.1 The legislation does not apply 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 and the Commission will report annually to Secretary of State on the exercise of its functions under the IPCC Regulations.

13. Contact

- 13.1 Suzelle Dickson at the Home Office Telephone: 0207 035 8142 or email: suzelle.dickson@homeoffice.gsi.gov.uk can answer any queries regarding the instruments.