



Immigration Act 2016

2016 CHAPTER 19

PART 1

LABOUR MARKET AND ILLEGAL WORKING

CHAPTER 1

LABOUR MARKET

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

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- 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,

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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—
 - (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.