



Department for  
Business & Trade



Fair Work  
Agency

# **Code of Practice on Fair Work Agency Labour Market Enforcement Undertakings and Orders**

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# Code of Practice on Fair Work Agency Labour Market Enforcement Undertakings and Orders

The Fair Work Agency (FWA) Labour Market Enforcement regime provides a coherent framework for identifying and preventing abuses of labour market legislation, and to strengthen the enforcement response. This includes powers for Labour Market Enforcement Undertakings (LMEU) and Labour Market Enforcement Orders (LEMO). The FWA will consider this Code of Practice when using the Labour Market Enforcement (LME) regime under the Employment Rights Act 2025.

## How should this Code of Practice be used?

The Code sets out the factors to be considered by the FWA when using the LME regime.

## How the Fair Work Agency uses this Code of Practice

The Fair Work Agency (FWA) will have regard to this Code when using the LME regime. The Code does not impose any legal duties on employers, gangmasters, businesses or enforcing authorities, nor is it an authoritative statement of the law: only the courts can provide that.

## Extent

All labour market offences contained in legislation within the FWA's enforcement remit can trigger the use of an LME undertaking in England and Wales and, for some offences, in Scotland. Only National Minimum Wage (NMW) offences can do so in Northern Ireland.

## Who can use the regime?

The Secretary of State through the FWA can seek an LME undertaking, apply for an LME order and investigate a breach of an LME order in respect of a labour market offence (defined in section 151(1)) contained in labour market legislation listed in Part 1 of Schedule 7 to the Employment Rights Act 2025 (ERA 2025).

## Labour Market Enforcement Undertaking (LMEU)s

An undertaking may be sought where the FWA believes an offence (a breach of relevant legislation which can be subject to criminal prosecution) has been or is being committed and at least one 'measure' in the undertaking is necessary to prevent further non-compliance. The factors that will be considered by the FWA before seeking an undertaking include:

- the number of labour market offences believed to have been committed
- whether previous enforcement action has been taken
- the number of workers affected by the offence
- any harm, physical or otherwise, to workers
- the amount of money due to workers
- whether the breach was committed recklessly or intentionally, as opposed to by straightforward error
- the level of recklessness that led to the breach

The FWA will give a notice to the business identifying the offence which it believes has been committed, giving reasons for that belief, and inviting them to give an LMEU in the terms attached to the notice.

An undertaking can be given by an individual, a company, a partnership or an unincorporated association. It takes effect when offered by the relevant business and accepted by the FWA. The duration will be specified in the undertaking subject to a maximum of 2 years.

An undertaking can be used instead of or alongside existing sanctions. For example, the FWA could seek to enforce the payment of wages due to a worker and seek an undertaking to prevent future non-compliance.

LMEUs may be used in England and Wales, and Scotland, but not Northern Ireland except in relation to offences under the National Minimum Wage Act 1998 and sections 139, 140 and 142 of ERA 2025. Where there are several labour market offences occurring in England and Wales or Scotland, the FWA may consider the use of a combined LMEU.

## **Labour Market Enforcement Orders (LMEO)**

The FWA may apply to the courts for an LMEO where an undertaking has been refused, has not been given within the negotiation period or where an undertaking has been breached. The standard of proof to be applied by the court relating to the offence is the balance of probabilities. The higher criminal standard of proof will be applied if the respondent is prosecuted for underlying offence or breaching an LMEO imposed by the court. An application resulting in an LMEO being made provides the business with a further opportunity to address non-compliance before facing a potential criminal sanction.

The relevant court for an application for a LMEO is the magistrates' court in England and Wales, the sheriff court in Scotland or the court of summary jurisdiction in Northern Ireland, according to where the conduct constituting the offence took place.

The court may make an LMEO if considers that the underlying offence is made out on the balance of probabilities and that it is just and reasonable to do so. The FWA will suggest measures when it applies to the court for an order, although a court is not obliged to include the measures suggested, or the measures contained in the undertaking proposed or breached. An LMEO takes effect on the date specified in it by the court and has the same maximum duration as an undertaking (2 years). When an order is made, a court may release the respondent from a previous order made in the same jurisdiction or from an undertaking given in relation to the same offence.

## **Measures in an LME undertaking or order**

LMEUs or orders may include prohibitions, restrictions or impose requirements on businesses, only if the measures do one or both of the following:

- prevent or reduce the risk of non-compliance with requirements in the enactment containing the offence
- bring the existence of the undertaking or order, the circumstances in which it was given and any action taken (or not taken) in order to comply with the undertaking or order to the attention of interested parties

In addition, the measures in LMEUs must be considered to be just and reasonable. The undertaking or order must make clear how measures for the purpose of preventing or reducing the risk of the person giving it not complying with any requirement in the relevant labour market legislation are expected to achieve that purpose.

## **Process for giving notice of an undertaking**

A notice seeking an undertaking may be given by the FWA to a business. The undertaking cannot be imposed on the business: the business determines whether or not to give the undertaking.

A notice seeking the undertaking may be served in person, by post or electronically, (subject to the person indicating they are prepared to receive such notice in a specified electronic format and to an electronic address), and can be given to an individual, a company officer or a partner, or unincorporated association depending on the type of business. The notice must set out which offence the enforcing authority believes has been or is being committed, why the enforcing authority believes this to be the case, and will invite the person to give an undertaking, in the form attached to the notice, to comply with any prohibitions, restrictions or requirements set out in the undertaking. The proposed undertaking must set out how these measures are expected to prevent or reduce the risk of the particular non-compliance identified.

## **Negotiation period**

A negotiation period of 14 days (or longer period if agreed with the proposed respondent) will be triggered by service of the notice given to the business to provide an opportunity for them to accept the undertaking proposed or to propose alternative means of achieving compliance. If any such alternative is not accepted by the enforcing authority (because, for example, the enforcing authority does not believe that it will achieve compliance to a similar degree or timescale) and the person does not agree to the measures in the original notice by the end of the negotiation period, the person is deemed to have failed to give an undertaking. In these circumstances, an enforcing body may apply to the courts for an LMEO in accordance with sections 123 and 124 of the ERA 2025 or pursue alternative action under existing legal powers. Save in exceptional circumstances, an enforcing authority should always take one of these actions. This is to preserve the integrity of the LMEUs regime and enable it to act as a deterrent.

## **Duration**

An undertaking takes effect when it is accepted by the enforcing authority unless a later date is specified in the undertaking. The duration is specified in the undertaking subject to a maximum of 2 years.

## **Monitoring compliance**

When an undertaking has been accepted, the enforcing authority should determine on a case-by-case basis how, and at what intervals, compliance with the measures should be monitored. This should be proportionate and in accordance with the FWA's strategy. For example, if a business has used the services of an unlicensed gangmaster, an undertaking could require that business to notify the enforcing authority when new gangmasters are used. An initial visit could be made to check that the business was no longer using unlicensed gangmasters. The business would also be expected to register for the FWA's active check service for all gangmasters that it used to ensure that it did not inadvertently use unlicensed gangmasters in the future. The undertaking could remain in place until the enforcing authority was satisfied that arrangements were in place to check that only licensed gangmasters were being used (subject to the two-year maximum). A complaint from a worker might indicate the need for a follow up visit.

## **Release**

A business can be released from an undertaking by the enforcing authority and must be released where, in the belief of the enforcing authority, no measures in the undertaking are necessary to prevent or reduce the risk of a further labour market offence under the relevant legislation being committed, or of such an offence continuing to be committed.

This will be the case either where the measures in the undertaking have been acted upon, or compliance has been achieved through measures other than that/those set out in the undertaking (or a combination of such measures). It would, however, be appropriate for the enforcing authority to maintain the undertaking if it believed that, despite having been complied with on a particular occasion, the measures remained necessary to prevent future non-compliance. This requires the

enforcing authority to form a view on the behaviour and response of the subject of the undertaking in the round.

If the practical measures contained in the undertaking have been taken by the business in question and compliance with the requirements of the legislation containing the offence has still not been achieved, the enforcing authority should consider whether the original undertaking was inadequate, and whether the subject should be released from it. In these circumstances, the enforcing authority should consider whether, to secure compliance, a new undertaking should be sought containing different measures.

## **Breaches of LME undertakings**

Save in exceptional circumstances, an enforcing authority should apply to a court for an LME order if it believes that an undertaking has been breached. The process is set out in the next chapter. This is to preserve the integrity of the LME undertakings regime and ensure that it acts as a suitably strong deterrent to prevent future offending.

## **LME orders on application**

An enforcing authority may apply to the court for an LME order where an undertaking has not been given within the negotiation period or where an undertaking has been breached. The standard of proof in relation to the relevant offence is the balance of probabilities. The higher criminal standard of proof will be applied if the respondent is prosecuted for breaching an LME order imposed by the court. An LME order provides the business with a further opportunity to address non-compliance before facing a potential criminal sanction.

The court must consider it to be just and reasonable to make the LME order. The enforcing authority will suggest measures when it applies to the court for an order, although a court is not obliged to include the measures suggested, or the measures contained in any undertaking breached. An LME order takes effect on the date and for the period specified in it by the court and has the same maximum duration as an undertaking (2 years). When an order is made, a court may release the respondent from a previous order made in the same jurisdiction or from an undertaking given in relation to the same offence.

## **LMEOs following conviction**

A sentencing court may make an LMEO where the respondent has been convicted of a labour market offence. Enforcing Authorities will wish to consider at the time of conviction whether to invite the court to make an LMEO in addition to sentencing for the offence.

## **Variation and Discharge**

The respondent or the Secretary of State can apply to the court that made the order for it to be varied or discharged.

## **Breaches of LME orders**

An offence is committed if the respondent fails to comply with an LMEO without reasonable excuse (section 139(1) ERA 2025).

The criminal standard of proof applies – i.e. that it is beyond reasonable doubt that the respondent has breached the LMEO. The maximum penalty is 2 years' imprisonment and/or a fine on

conviction on indictment or, on summary conviction, 6 months' imprisonment in England and Wales<sup>1</sup> or in Northern Ireland or 12 months in Scotland and/or a fine, or both.

It is not necessary to wait until a new offence is committed before prosecuting for breach of the LMEO- it is enough that one of the measures in the order has not been complied with.

Bodies corporate, unincorporated associations and partnerships with legal personality are liable to prosecution, as is an individual officer or partner where the offending conduct is attributable to their neglect or was committed with their consent or connivance.

## **LME Undertaking and Orders alongside existing sanctions**

LMEUs and LMEOs are an additional tool in more serious and persistent cases, where the enforcing authority is of the view that other enforcement action will not prevent or stop the non-compliance and prosecution is not yet proportionate.

Undertakings may be used in parallel or as an alternative to other powers, or instead of prosecution, where there is evidence of a criminal labour market offence. The FWA will determine the appropriate approach to adopt in each case based on the assessment of the best means of preventing or reducing the risk of further labour market offences being committed by the business in question. The situation will be assessed on a case-by-case basis to ensure that the sanction is proportionate to the offence.

Although it is ultimately an operational decision for the FWA to seek an undertaking, the LME regime has been designed to provide an additional tool against labour market exploitation and there is an expectation that it will be used where it is the best tool to prevent non-compliance. The FWA may make recommendations in its strategy on the manner in which the LMEU and orders regime may best be used to target non-compliance.

It may be appropriate to use an LMEU for a first offence if the impact on workers is significant (especially if a prosecution is not yet being pursued) or a number of offences are discovered simultaneously e.g. NMW underpayment combined with poor record keeping or obstruction. Depending on the extent of the underpayment, the number of workers affected and whether poor record keeping is intentional, reckless or the result of straightforward administrative error. An LMEU or LMEO is designed to reduce the risk of future non-compliance and therefore complements existing sanctions which address past non-compliance. A notice seeking an undertaking must, in the proposed undertaking, set out the suggested measures and how the particular measures are expected to prevent or reduce the risk of the particular non-compliance in question.

The FWA will consider referral for criminal prosecution in cases of serious, deliberate or persistent non-compliance where criminal action is necessary to protect workers, deter offending, or uphold the integrity of the labour market. Prosecution is reserved for cases where civil enforcement tools would not adequately address the conduct or risk.

The FWA does not itself decide whether a prosecution will be brought. That decision is taken by the relevant independent prosecuting authority, applying the applicable prosecutorial code

## **Examples of joint LME Undertaking and Orders alongside existing sanctions**

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<sup>1</sup> 6 months in England and Wales pending commencement of section 281(5) of the Criminal Justice Act 2003.

### *Example - LMEO alongside a criminal penalty*

When an employment agency has been prosecuted and the court has imposed a fine for contravening the restriction on charging a work finding fee and the conduct is serious or repeated, the FWA may consider it appropriate to seek an LMEO.

This would prevent that agency treating the fine as an acceptable business overhead and continuing to charge unlawful fees. A breach of the LMEO may lead to criminal proceedings, and on conviction individuals may face a custodial sentence.

### *Example - LMEU alongside civil sanctions*

A previous civil penalty or other sanction may have already been given but the offending behaviour has continued, or the business has resorted to a different type of non-compliance to maintain profits. In these circumstances, the FWA may seek an LMEU to ensure that there are consequences for businesses which treat a civil penalty or fine as an acceptable overhead and continue to mistreat workers.

### *Example - LMEU supporting NMW enforcement*

The primary objective of NMW enforcement is to recover money owed to workers, and this may be achieved by a Notice of Underpayment. An undertaking may also be appropriate alongside a notice where there is a risk of further offending. For example, an undertaking may include requirements to improve record-keeping or to produce specified documents within defined timescales where obstruction or poor compliance has been identified.

## **Alternatives to LMEUs or prosecution**

In cases where a prosecution or LMEU is not the most appropriate course of action, the alternative of issuing a formal written warning will be considered alongside the FWAs other enforcement mechanism, such as a Notice of Underpayment. This sanction will be applied, where appropriate, in the jurisdictions of England and Wales, Scotland, and Northern Ireland.

A formal written warning notifies the offender that:

- they have committed a specific offence
- a record of the warning will be retained by the FWA
- the warning may be referred to the relevant Prosecutor to consider whether it will be referred to in Court proceedings at any later date

In cases where a criminal breach is not proven, the FWA may issue an advisory notice to ensure that the recipient is aware of future conduct and compliance that is expected, and that they are not ignorant of the relevant legislation.

The FWA will endeavour to meet the government's intention that a business should only be subject to one undertaking or order at a time where possible.

## **Providing expert witness testimony**

The FWA will draw on the expertise across the full range of labour market enforcement functions, to provide support and expert witness testimony in respect of their specialist areas, including:

- framing measures in an undertaking
- negotiating with the business during the 14-day period on any alternative proposals for securing compliance

- monitoring compliance with undertakings or orders, including advising on whether a measure is still necessary to prevent non-compliance (a pre-requisite for undertakings)
- applications to the court for an order
- variation of an order (either making an application or responding)
- responding to appeals against an order
- prosecutions

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**Department for Business and Trade**

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