



Report to:	Licensing Committee	Date:	12 June 2017
Report title:	Update on the changes to the Licensing Act 2003 brought about by the Immigration Act 2016		
Report from:	Mary Morrissey, Strategic Director Environment Housing and Regeneration		
Ward/Areas affected:	Borough Wide		
Chair of Committee/Lead Member:	Councillor Mary Burstow		
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Corporate Plan Priorities:	<ul style="list-style-type: none"> • An Open Council • A Fair Council 		
Open/Exempt:	Open		
Signed:		Date:	1 June 2017

1. Summary

- 1.1 This report updates the Licensing Committee on implementation of the Immigration Act 2016, how immigration offences affect Licensing Act 2003 decisions in light of new guidance published by the Home Office and the practical implementation of these changes.

2. Recommendations

The Licensing Committee is recommended to:

- 2.1 Note the updates to the Licensing Act 2003 and associated legislation.

3. Background

- 3.1 The Immigration Act received Royal Assent in May 2016 and introduced a number of changes, particularly with respect to illegal working on licensed premises. The licensing elements are contained in Schedule 4 making changes to the Licensing Act 2003 and the principal points of note include the following.

- 3.2 **Premises Licence applications:** The Secretary of State (Home Office) becomes a responsible authority within the definition of the 2003 Act. This allows the Immigration Service to make representations against the grant or variation of a premises licence application. An individual applying for a new premises licence, transfer of an existing licence or giving service of an interim authority notice must have leave to work in the United Kingdom and must provide evidence of



this entitlement at the time of application. In a hearing convened due to the Secretary of State's representation, the Licensing Authority must reject the application if it considers it appropriate for the prevention of illegal working in licensed premises to do so, thereby linking to the prevention of crime and disorder objective.

- 3.3 Under the new framework, a premises licence will lapse if the licence holder ceases to be entitled to work in the United Kingdom.
- 3.4 It should be noted the provisions do not apply to Club Premises Certificates and Temporary Event Notices. The Home Office believe there is little evidence of immigration abuse in respect of premises authorised under Club Premises Certificates, and it would have been disproportionate to apply the requirements to Temporary Event Notices.
- 3.5 **Personal licences:** An individual is not able to apply for a personal licence if he or she is not entitled to live and work in the United Kingdom and an existing personal licence lapses if an individual ceases to be entitled as such. Therefore, if the personal licence of a designated premises supervisor was to lapse, the sale of alcohol on the premises would automatically become unlawful. Premises licence holders could then face prosecution for unlawful sales of alcohol and/or licence reviews. Additionally, the list of 'relevant and foreign offences' in relation to personal licences has been expanded to include 'immigration offences and immigration penalties'. The Secretary of State must consider such offences when determining whether the grant of a personal licence would be prejudicial to the prevention of illegal working in licensed premises.
- 3.6 **Right of Entry to Licensed Premises.** Where a constable or authorised person has reason to believe that offences under the Immigration Act 2014 are being committed, they have a right to enter licensed premises to investigate. An immigration officer is given the same power of entry.

4. Home Office Guidance

- 4.1 The Home Office published new 'Guidance for licensing authorities to prevent illegal working in licensed premises in England and Wales' on 04 May 2017 and sets out what the immigration amendments to the Licensing Act 2003 mean to Licensing Authorities and the Home Office (Immigration Enforcement). In summary these are:
 - 4.1.1 Licensing Authorities are under a duty not to issue licenses to individuals who do not have the required immigration permission to work in a licensable activity.
 - 4.1.2 Home Office (Immigration Enforcement) will undertake the role of a 'responsible authority'. It will also use the power of entry contained within the Licensing Act 2003 to investigate illegal working in premises engaged in licensable activities, working with licensing enforcement officers and the police.

5. Options Considered

- 5.1 For an application for a premises licence or a personal licence to be lawful and valid, it must, when made by an individual(s), be made by someone who is over the age of 18, and, if they are living in the UK, they must be entitled to be in the UK and to work in a licensable activity. Applicants who are not living in the UK are not required to be eligible to work in the UK to hold a personal or premises licence.
- 5.2 In order to discharge their duty, Licensing Authorities must be satisfied that an applicant has the right to work in the UK. To do this applicants must now submit documented evidence to show that the applicant has permission to be in the UK and to undertake work in a licensable activity.
- 5.3 Licensing Authorities are therefore responsible for carrying out the checks to ensure that the applicant is entitled to live in the UK and to work in a licensable activity.
- 5.4 Home Office (Immigration Enforcement) now receive all premises licence and some personal licence applications. They will consider whether there are immigration offences or penalties which lead them to believe that to grant a licence is likely to be prejudicial to the prevention of immigration crime and likely to undermine one of the licensing objectives. If so they may raise representation.
- 5.5 The relevant licence application forms have been amended to contain a list of documents that licence applicants should provide. The applicant must provide their date of birth, their nationality and their residential address. Evidence of their entitlement to work in the UK should also accompany their application, i.e. residency permit, UK passport etc.
- 5.6 If an applicant fails to provide the appropriate documentation from which the licensing authority is satisfied that the individual is entitled to work the Licensing Authority is responsible for following up on these requirement. If the applicant fails to provide the appropriate documentation, the application must be rejected and the licence must not be granted.
- 5.7 It is the responsibility of the licensing authority to be satisfied that an individual's immigration status does not preclude them from holding a premises licence or personal licence.
- 5.8 As a responsible authority the Home Office (Immigration Enforcement) may request that a licensing authority reviews an existing licence where it has concerns relating to the licensing objective of preventing crime and disorder, including immigration crime and preventing illegal working in licensed premises. This is dealt with as a standard review, with a full 28 day consultation period.
- 5.9 In addition, the licensing authority must review a premises licence if the premises to which it relates was made the subject of a compliance order to prevent illegal working. The Licensing Authority has 28 days to determine this type of licence review.



6. Impacts and Implications

Financial

6.1 There are no financial implication arising from this report.

Legal

6.2 Section 36 and Schedule 4 of the Immigration Act 2016 introduce immigration safeguards in respect of licensing applications made in England or Wales on or after 6 April 2017. The intention of the changes are to prevent illegal working in premises licensed for the sale of alcohol or late night refreshment.

7. Appendices and Background Documents

Appendix letter	Title
None.	

Background documents
Guidance for Licensing Authorities to Prevent Illegal Working in Licensed Premises in England and Wales (Home Office, May 2017)

Audit Trail		
Version	Final	Date: 1 June 2017
Consultation with other officers		
Finance	No	N/A
Legal	No	N/A
Equality Impact Assessment required?	No	N/A