

Draft Regulations laid before Parliament under section 93(2)(e) of the Immigration Act 2016, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.

IMMIGRATION, SCOTLAND

The Immigration (Alcohol Licensing and Late Hours Catering) (Scotland) Regulations 2018

Made - - - - *****

Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the powers conferred by sections 36(2) and (3) and 93(6)(c) and (d) of the Immigration Act 2016⁽¹⁾, makes the following Regulations.

In accordance with section 93(2)(e) of that Act, a draft of these Regulations was laid before and approved by a resolution of each House of Parliament.

PART 1

CITATION, COMMENCEMENT AND INTERPRETATION

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Immigration (Alcohol Licensing and Late Hours Catering) (Scotland) Regulations 2018 and come into force on the twenty-first day after the day on which they are made.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations—

“the 1982 Act” means the Civic Government (Scotland) Act 1982⁽²⁾;

“the 2005 Act” means the Licensing (Scotland) Act 2005⁽³⁾;

(1) 2016 c. 19.
(2) 1982 c. 45.
(3) 2005 asp 16.

“the 2015 Act” means the Air Weapons and Licensing (Scotland) Act 2015⁽⁴⁾.

PART 2

ENTITLEMENT TO WORK IN THE UNITED KINGDOM

Entitlement to work in the United Kingdom: alcohol licensing

3. In section 147 of the 2005 Act (interpretation) after subsection (5)⁽⁵⁾ insert—

“(6) For the purposes of this Act an individual is entitled to work in the United Kingdom if—

- (a) the individual does not under the Immigration Act 1971 require leave to enter or remain in the United Kingdom, or
- (b) the individual has been granted such leave and the leave—
 - (i) is not invalid,
 - (ii) has not ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), and
 - (iii) is not subject to a condition preventing the individual from doing work relating to the sale of alcohol on any premises.

(7) Where an individual is on immigration bail within the meaning of Part 1 of Schedule 10 to the Immigration Act 2016—

- (a) the individual is to be treated for the purposes of subsection (6) as if the individual had been granted leave to enter the United Kingdom, but
- (b) any condition as to the individual’s work in the United Kingdom to which the individual’s immigration bail is subject is to be treated for those purposes as a condition of leave.”.

Entitlement to work in the United Kingdom: late hours catering licensing

4. After section 42 of the 1982 Act (late hours catering licences)⁽⁶⁾ insert—

“42A Persons entitled to work in the United Kingdom

(1) For the purposes of section 42(2A) an individual is entitled to work in the United Kingdom if—

- (a) the individual does not under the Immigration Act 1971 require leave to enter or remain in the United Kingdom, or
- (b) the individual has been granted such leave and the leave—
 - (i) is not invalid,
 - (ii) has not ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), and
 - (iii) is not subject to a condition preventing the individual from doing work relating to the use of premises for the sale to or consumption by the public

(4) 2015 asp 10.

(5) Section 147(5) was inserted by section 184(1) and (4) of the Criminal Justice and Licensing (Scotland) Act 2010 (2010 asp 13) (“the 2010 Act”), and amended by section 59(1) and (5) of the Air Weapons and Licensing (Scotland) Act 2015 (2015 asp 10) (“the 2015 Act”); neither the insertion nor the amendments are yet in force.

(6) Section 42 was amended by section 177 of the 2010 Act.

of food between the hours of eleven o'clock in the evening and five o'clock the following morning.

- (2) Where an individual is on immigration bail within the meaning of Part 1 of Schedule 10 to the Immigration Act 2016—
- (a) the individual is to be treated for the purposes of subsection (1) as if the individual had been granted leave to enter the United Kingdom, but
 - (b) any condition as to the individual's work in the United Kingdom to which the individual's immigration bail is subject is to be treated for those purposes as a condition of leave.”.

PART 3

ALCOHOL LICENSING

Amendments to the 2005 Act

5. The 2005 Act is amended as follows.

Application for premises licence

6. In section 20 (application for premises licence)(7)—
- (a) in subsection (1), at the beginning insert “Subject to subsection (1A),”;
 - (b) after subsection (1) insert—

“(1A) An individual who is resident in the United Kingdom may not apply for a premises licence in respect of any premises unless the individual is entitled to work in the United Kingdom.

(1B) If, notwithstanding subsection (1A), an individual who is resident but not entitled to work in the United Kingdom applies for a premises licence, the application is invalid and must be treated by the Licensing Board as not having been made.”.

Notification of application

- 7.—(1) Section 21 (notification of application)(8) is amended as follows.
- (2) In subsection (1)—
- (a) omit “and” at the end of paragraph (d);
 - (b) after paragraph (e) insert—

“, and

(f) the Secretary of State.”.
- (3) In subsection (2)(a), after “chief constable” insert “and the Secretary of State”.

(7) Section 20 was amended by section 179(1), (2) and (3) of the 2010 Act and [S.S.I. 2012/304](#).

(8) Section 21(1) was amended by paragraphs 29(1) to (3) of Schedule 7 to the Police and Fire Reform (Scotland) Act 2012 ([2012 asp 8](#)) (“the 2012 Act”) and section 180(1) and (2) of the 2010 Act. There are other amendments to section 21 but none is relevant.

Objections and representations

8. In section 22(1) (objections and representations)(9), after “any person” insert “, including the Secretary of State,”.

Determination of premises licence application

9. In section 23(5) (determination of premises licence application)(10), after paragraph (c) insert—

- “(ca) that the Licensing Board, having regard to any notice given by the Secretary of State under section 22(1), considers that it is appropriate for the prevention of illegal working in licensed premises to refuse the application.”.

Period of effect of premises licence

10. In section 28 (period of effect of premises licence)(11), in subsection (5), after paragraph (c) insert—

- “(ca) the premises licence holder, being an individual—
- (i) ceases to be entitled to work in the United Kingdom at a time when the premises licence holder is resident in the United Kingdom, or
 - (ii) becomes resident in the United Kingdom without being entitled to work in the United Kingdom,”.

Application for transfer of premises licence

11.—(1) Section 33 (application for transfer of premises licence) is amended as follows.

(2) In subsection (1), at the beginning insert “Subject to subsection (1ZA),”.

(3) After subsection (1)(12) insert—

“(1ZA) An individual who is resident in the United Kingdom may not make an application under subsection (1) unless the individual is entitled to work in the United Kingdom.

(1ZB) If, notwithstanding subsection (1ZA), an individual who is resident but not entitled to work in the United Kingdom makes an application under subsection (1), the application is invalid and must be treated by the Licensing Board as not having been made.”.

(4) After subsection (7A)(13), insert—

“(7B) Where a Licensing Board receives an application under subsection (1), the Board must give notice of it, together with a copy of the application, to the Secretary of State, unless the Board must refuse the application under subsection (8A).

(7C) Where the Secretary of State is given notice under subsection (7B) and is satisfied that the exceptional circumstances of the case are such that granting the application would be prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must give the Licensing Board a notice stating the reasons for being so satisfied.

(9) Relevant amendments to section 22 were made by section 183(2) (partially in force) of and paragraph 4 of Schedule 6 to the 2010 Act, paragraph 29 of Schedule 7 to the 2012 Act and section 43(2) of the 2015 Act.

(10) Section 23(5) was amended by sections 43(3) and 55(3) of the 2015 Act.

(11) Section 28(2) is prospectively amended by paragraph 4(1) and (2) of Schedule 2 to the 2015 Act.

(12) Section 33(1A) is prospectively inserted by section 49(1) and 2(a) of the 2015 Act.

(13) Section 33(7A) was inserted by section 44(1) and (2)(a) of the 2015 Act. Section 33(8A) is prospectively inserted by section 49(1) and (2)(d) of the 2015 Act.

(7D) The Secretary of State must give that notice within the period of 21 days beginning with the day on which the Secretary of State is given notice of the application under subsection (7B).”

(5) In subsection (8)(14)—

(a) omit “and” at the end of paragraph (b);

(b) after paragraph (c) insert—

“, and

(d) no notice has been given under subsection (7C).”

(6) In subsection (10)(15), after “subsection (7A)” insert “and any notice given by the Secretary of State under subsection (7C)”.

(7) In subsection (11)(16), after paragraph (a) insert—

“(aa) that, having regard to a notice given under subsection (7C), it is appropriate for the prevention of illegal working in licensed premises to refuse the application.”

Application for review of premises licence

12.—(1) Section 36 (application for review of premises licence)(17) is amended as follows.

(2) After subsection (2) insert—

“(2A) Where a Licensing Board receives a premises licence review application, the Board must give notice of it, together with a copy of the application, to the Secretary of State, unless the Secretary of State is the applicant or the Board intends to refuse the application under subsection (6).

(2B) Where the Secretary of State is given notice under subsection (2A) and is satisfied that the exceptional circumstances of the case are such that the continuation of the licence is prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must give the Licensing Board a notice stating the reasons for being so satisfied.”

(3) After subsection (3)(za) insert—

“(zb) that the continuation of the licence is prejudicial to the prevention of illegal working in licensed premises.”

Review of premises licence on Licensing Board’s initiative

13. In section 37 (review of premises licence on Licensing Board’s initiative)(18), after subsection (2) insert—

“(2A) Where a Licensing Board makes a premises licence review proposal, the Board must give notice of the proposal to the Secretary of State.

(2B) Where the Secretary of State is given notice under subsection (2A) and is satisfied that the exceptional circumstances of the case are such that the continuation of the licence is prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must give the Licensing Board a notice stating the reasons for being so satisfied.”

(14) Section 33(8) was amended by section 44(1) and (2)(b) of the 2015 Act and is prospectively amended by section 49(1) and (2)(c) of the 2015 Act.

(15) Section 33(10) was amended by paragraphs 1 and 7(1) and (3) of Schedule 6 to the 2010 Act and is prospectively amended by section 44(1) and (2)(c) of the 2015 Act.

(16) Section 33(11) was inserted by section 44(1) and (2)(d) of the 2015 Act.

(17) Section 36 was amended by section 45(1) and (2)(a) to (c) of the 2015 Act.

(18) Section 37 was amended by paragraphs 4(1) and (5) of Schedule 2 to the 2015 Act.

Review hearing

14. In section 38(3)(b) (review hearing), following sub-paragraph (i) and before the “and” insert—

“(ia) the Secretary of State, if the Secretary of State is not the applicant.”.

Notification of determinations

15. In section 39A(2) (notification of determinations)(19), following paragraph (a) and before the “and” insert—

“(aa) in a case where the Secretary of State has provided information to the Licensing Board for the purposes of the review hearing, the Secretary of State, and”.

Application for personal licence

16.—(1) Section 72 (application for personal licence) is amended as follows.

(2) In subsection (1), at the beginning insert “Subject to subsection (1A).”.

(3) After subsection (1) insert—

“(1A) An individual who is resident in the United Kingdom may not apply for a personal licence unless the individual is entitled to work in the United Kingdom.

(1B) If, notwithstanding subsection (1A), an individual who is resident but not entitled to work in the United Kingdom applies for a personal licence, the application is invalid and must be treated by the Licensing Board as not having been made.”.

(4) After subsection (2) insert—

“(3) A personal licence application must state whether the applicant has been required to pay an immigration penalty.”.

Notification of application to Secretary of State

17. After section 73A(20), insert—

“73B Notification of application to Secretary of State

(1) Where a Licensing Board receives a personal licence application, the Board must give notice of it, together with a copy of the application, to the Secretary of State.

(2) If the Secretary of State is satisfied that granting the licence would be prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must, within the period of 21 days beginning with the day on which the Secretary of State received the notice under subsection (1), give the Licensing Board an immigration objection notice.”.

Determination of personal licence application

18.—(1) Section 74 (determination of personal licence application) is amended as follows.

(2) In subsection (2), after paragraph (ca)(21) insert—

“(cb) the Board has not received an immigration objection notice within the period referred to in section 73B(2).”.

(19) Section 39A(2) was inserted by section 182(1) and (2) of the 2010 Act and amended by section 45(1) and (5) of the 2015 Act.

(20) Section 73A was inserted by section 46(1) and (3) of the 2015 Act.

(21) Paragraph (ca) of section 74(2) was inserted by section 46(1) and (4)(a) of the 2015 Act.

- (3) In subsection (3)(22), after paragraph (a) insert—
- “(aa) the applicant is entitled to work in the United Kingdom,”.
- (4) After subsection (5), insert—
- “(5ZA) If—
- (a) all of those conditions are met in relation to the applicant, and
- (b) the Board has received an immigration objection notice within the period referred to in section 73B(2),
- the Board must hold a hearing for the purpose of considering and determining the application.”.
- (5) In subsection (6)(23)—
- (a) after “hearing under subsection (5),” insert “(5ZA),”; and
- (b) after “section 73(5) or 73A(2)” insert “or in a notice given under 73B(2)”.
- (6) In subsection (6A)(24), after paragraph (b) insert—
- “or,
- (c) that granting the licence would be prejudicial to the prevention of illegal working in licensed premises.”.

Applicant’s duty to notify Licensing Board of convictions

19.—(1) Section 75 (applicant’s duty to notify Licensing Board of convictions) is amended as follows.

- (2) In the title of section 75, after “convictions” insert “and penalties”.
- (3) In subsection (1), after “foreign offence” insert “or required to pay an immigration penalty”.
- (4) In subsection (2)—
- (a) after “conviction”, in the first place where it occurs, insert “or (as the case may be) the date on which the requirement to pay the immigration penalty arose”; and
- (b) after “conviction”, in the second place where it occurs, insert “or the penalty”.
- (5) In subsection (3)—
- (a) in paragraph (a), after “offence” insert “or the penalty”; and
- (b) in paragraph (b), after “conviction” insert “or the date on which the requirement to pay the immigration penalty arose”.
- (6) In subsection (4)(b)(25), at the beginning insert “in the case of a notice which specifies a conviction,”.
- (7) After subsection (7)(26) insert—
- “(7A) The Licensing Board must give notice to the Secretary of State where they receive a notice under subsection (2) that the applicant has been—
- (a) convicted of an immigration offence,
- (b) convicted of a foreign offence that the Licensing Board considers to be comparable to an immigration offence, or

(22) Section 74(3) was amended by section 192(1) and (2)(b) of the 2010 Act and section 60(1) and (2) of the 2015 Act.

(23) Section 74(6) was amended by paragraphs 1, (4)(a) and (b), and 13(1) of Schedule 6 to the 2010 Act and section 46(1) and (4)(d) of the 2015 Act.

(24) Section 74(6A) was inserted by section 46(4)(e) of the 2015 Act.

(25) Section 75(4)(b) was amended by paragraph 29(1) to (3) of Schedule 7 to the 2012 Act.

(26) Section 75(7) was amended by paragraphs 1 and 14(1) and (2) of Schedule 6 to the 2010 Act.

(c) required to pay an immigration penalty.

(7B) If the Secretary of State is satisfied that granting the licence would be prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must, within the period of 21 days beginning with the day on which the Secretary of State received the notice under subsection (7A), give the Licensing Board an immigration objection notice.”.

(8) In subsection (8), after “section 74” insert “(but subject to subsection (8A))”.

(9) After subsection (8) insert—

“(8A) If the Licensing Board has given notice to the Secretary of State under subsection (7A), the Board must not comply with the duties imposed by subsection (8) until either of the following occurs—

(a) receipt by the Board of an immigration objection notice within the period referred to in subsection (7B), or

(b) the expiry of that period without the Board receiving such a notice.”.

(10) In subsection (9)(27)—

(a) for “For that purpose, that section” substitute “For the purposes of subsection (8) and (8A), section 74”;

(b) omit “and” at the end of paragraph (b);

(c) after paragraph (c) insert—

“, and

(d) references in it to an immigration objection notice received within the period referred to in section 73B(2) include references to an immigration objection notice received within the period referred to in subsection (7B) of this section.”.

Issue of licence

20. In section 76(2) (issue of licence), following paragraph (d) and before the “and” insert—

“(da) any immigration penalty which the applicant has been required to pay,”.

Period of effect of personal licence

21. In section 77(5) (period of effect of personal licence), before paragraph (a) insert—

“(za) the personal licence holder ceases to be entitled to work in the United Kingdom,”.

Renewal of personal licence

22. In section 78(5) (renewal of personal licence: application of other provisions of Act)(28), after “73A” insert “, 73B”.

Notification of determinations

23.—(1) Section 79(2) (persons to be notified of determinations)(29) is amended as follows.

(2) Omit “and” at the end of paragraph (a).

(3) After paragraph (b) insert—

(27) Section 75(9) was amended by paragraphs 1 and 14(1) and (3)(b) of Schedule 6 to the 2010 Act.

(28) Section 78(5) was amended by sections 46(1) and (5) and 60(1) and (4)(b) of the 2015 Act.

(29) Section 79(2) was amended by paragraph 29(1) to (3) of Schedule 7 to the 2012 Act.

“, and

- (c) if the Board has received an immigration objection notice under section 73B(2) or 75(7B), the Secretary of State,”.

Licence holder’s duty to notify Licensing Board of convictions

24.—(1) Section 82 (licence holder’s duty to notify Licensing Board of convictions) is amended as follows.

- (2) In the title of the section, after “convictions” insert “and immigration penalties”.
- (3) In subsection (1), after “offence” insert “or required to pay an immigration penalty”.
- (4) In subsection (2)—
 - (a) after “conviction”, in the first place where it occurs, insert “or (as the case may be) the date on which the requirement to pay the immigration penalty arose”; and
 - (b) after “conviction”, in the second place where it occurs, insert “or the penalty”.
- (5) In subsection (3)—
 - (a) omit “of conviction”;
 - (b) for sub-paragraphs (i) and (ii) of paragraph (a), but not the “and” at the end of sub-paragraph (ii), substitute—
 - “(i) where the notice relates to a conviction, the nature of the offence and the date of conviction, and
 - (ii) where the notice relates to an immigration penalty, the date on which the requirement to pay the immigration penalty arose,”.
- (6) In subsection (4) after “conviction” insert “or immigration penalty”.

Procedure where Licensing Board receives notice of conviction

25.—(1) Section 83 (procedure where Licensing Board receives notice of conviction) is amended as follows.

- (2) In the title of the section, after “conviction” insert “or immigration penalty”.
- (3) In subsection (1)—
 - (a) in paragraph (a), for “of conviction” substitute “under section 81(2) or 82(2)”; and
 - (b) in paragraph (b), after “foreign offence” insert “or required to pay an immigration penalty”.
- (4) For subsection (2)(30) substitute—
 - “(2) The Licensing Board must—
 - (a) give notice to the chief constable of any conviction included in a notice or of which they become aware, and
 - (b) give notice to the Secretary of State of any conviction or penalty included in a notice or of which they become aware, where the licence holder has been—
 - (i) convicted of an immigration offence,
 - (ii) convicted of a foreign offence that the Licensing Board considers to be comparable to an immigration offence, or
 - (iii) required to pay an immigration penalty.”.

(30) Section 83(2) was amended by paragraph 29(1) to (3) of Schedule 7 to the 2012 Act.

- (5) After subsection (5)(31), insert—
- “(5A) If the Secretary of State is satisfied that it would be prejudicial to the prevention of illegal working in licensed premises if the licence were not revoked, suspended or endorsed, the Secretary of State must, within the period of 21 days beginning with the day on which the Secretary of State received the notice under subsection (2)(b), give the Licensing Board an immigration objection notice.”.
- (6) In subsection (6)(32)—
- (a) after “(4)(a)” insert “and does not receive an immigration objection notice within the period referred to in subsection (5A)”; and
- (b) after “conviction” insert “or penalty”.
- (7) In subsection (7)(33), after “subsection (5)” insert “or receives an immigration objection notice within the period referred to in subsection (5A)”.
- (8) In subsection (7A)(34)—
- (a) after “subsection (5)” insert “and does not receive an immigration objection notice within the period referred to in subsection (5A)”; and
- (b) in paragraph (b), after “conviction” insert “or penalty”.
- (9) In subsection (8)(35)—
- (a) for paragraph (a), substitute—
- “(a) having regard to—
- (i) any conviction,
- (ii) any immigration penalty,
- (iii) any recommendation contained in the chief constable’s notice under subsection (5),
- (iv) an immigration objection notice.”;
- (b) omit “and” at the end of paragraph (b)(i); and
- (c) after paragraph (b)(ii), insert—
- “and
- (iii) if an immigration objection notice has been received, the Secretary of State.”.
- (10) In subsection (10)(36), following paragraph (b) and before the “and” insert—
- “(ba) if an immigration objection notice has been received, the Secretary of State.”.
- (11) In subsection (11), omit the definition of “notice of conviction”.

Relevant offences and foreign offences

- 26.** In section 129 (relevant offences and foreign offences)(37)—

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- (31) Section 83(5) was amended by paragraphs 1 and 15(1) and (2) of Schedule 6 to the 2010 Act and by paragraph 29(1) to (3) of Schedule 7 to the 2012 Act.
- (32) Section 83(6) was amended by paragraph 29(1) to (3) of Schedule 7 to the 2012 Act.
- (33) Section 83(7) was amended by paragraph 29(1) to (3) of Schedule 7 to the 2012 Act and section 51(a) of the 2015 Act.
- (34) Section 83(7A) was inserted by section 51(b) of the 2015 Act.
- (35) Section 83(8) was amended by paragraphs 1 and 15(1) and (3) of Schedule 6 to the 2010 Act, paragraph 29(1) to (3) of Schedule 7 to the 2012 Act and section 51(c) of the 2015 Act.
- (36) Section 83(10) was amended by paragraph 29(1) to (3) of Schedule 7 to the 2012 Act and by section 47(1) and (2)(c) of the 2015 Act.
- (37) Section 129 was amended by section 24(5) of the 2010 Act and is prospectively amended by section 52 of the 2015 Act.

- (a) in subsection (1), at the beginning insert “Subject to subsection (1A),”;
- (b) after subsection (1) insert—

“(1A) In this Act, a “relevant offence” includes an immigration offence (whether or not the immigration offence is prescribed in regulations made under subsection (1)).”.

Appeals

- 27.** In section 131 (appeals)(**38**), after subsection (5) insert—

“(5A) In any proceedings under this section, the sheriff principal or (as the case may be) the sheriff is not entitled to entertain any question as to whether—

- (a) a person should be, or should have been, granted leave to enter or remain in the United Kingdom, or
- (b) a person has, after the date of the decision being appealed against, been granted leave to enter or remain in the United Kingdom.”.

Form etc. of applications, proposals and notices

- 28.** In section 134 (form etc. of applications, proposals and notices)(**39**), after subsection (2) insert—

“(3) Subsection (1) does not apply to a notice mentioned in section 33(7B) or (7C), 36(2A) or (2B), 37(2A) or (2B), 73B(1) or (2), 75(7A) or (7B) or 83(2)(b) or (5A).”.

Powers of entry: immigration officers

- 29.** After section 138 of the 2005 Act, insert—

“138A Powers of entry: immigration officers

(1) Where an immigration officer has reason to believe that any premises are being used for the sale of alcohol, the officer may enter the premises with a view to seeing whether an offence under any of the Immigration Acts is being committed in connection with the sale of alcohol.

(2) An immigration officer exercising a power conferred by this section must, if so requested, produce evidence of that officer’s authority to exercise the power.

(3) An immigration officer exercising a power conferred by this section may, if necessary, use reasonable force.

(4) A person commits an offence if the person intentionally obstructs an immigration officer exercising a power conferred by this section.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) In this section, “immigration officer” means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971(**40**).”.

Interpretation

- 30.**—(1) Section 147 of the 2005 Act (interpretation) is amended as follows.

(38) There have been amendments to section 131 which are not relevant to these Regulations.

(39) Section 134 was amended by section 62 of the 2015 Act.

(40) There have been amendments to paragraph 1 of Schedule 2 to the Immigration Act 1971 which are not relevant to these Regulations.

- (2) In subsection (1)(41), insert at the appropriate places—
- ““the Immigration Acts” has the meaning given by section 61 of the UK Borders Act 2007(42),”;
- ““immigration objection notice” means a notice given by the Secretary of State stating the reasons why the Secretary of State is satisfied that granting a licence or omitting to revoke, suspend or endorse a licence (as the case may be) would be prejudicial to the prevention of illegal working in licensed premises,”;
- ““immigration offence” means an offence under the Immigration Acts,”.
- (3) After subsection (1) insert—
- “(1A) For the purposes of references in this Act to the prevention of illegal working in licensed premises, a person is working illegally if by doing that work at that time the person is committing an offence under section 24B of the Immigration Act 1971(43).”.
- (4) After subsection (7)(44), insert—
- “(8) In this Act “immigration penalty” means a penalty under—
- (a) section 15 of the Immigration, Asylum and Nationality Act 2006(45) (“the 2006 Act”), or
 - (b) section 23 of the Immigration Act 2014(46) (“the 2014 Act”).
- (9) For the purposes of this Act an immigration penalty is to be disregarded if—
- (a) more than three years have elapsed since the date on which the penalty was imposed, and
 - (b) the amount of the penalty has been paid in full.
- (10) For the purposes of this Act a person to whom a penalty notice under section 15 of the 2006 Act has been given is not to be treated as having been required to pay an immigration penalty if—
- (a) the person is excused payment by virtue of section 15(3) of that Act, or
 - (b) the penalty is cancelled by virtue of section 16 or 17 of that Act(47).
- (11) For the purposes of this Act a person to whom a penalty notice under section 15 of the 2006 Act has been given is not to be treated as having been required to pay an immigration penalty until such time as—
- (a) the period for giving a notice of objection under section 16 of that Act has expired and the Secretary of State has considered any notice given within that period, and
 - (b) if a notice of objection was given within that period, the period for appealing under section 17 of that Act has expired and any appeal brought within that period has been finally determined, abandoned or withdrawn.

(41) Section 147(1) was amended by section 11(5) of the Alcohol etc. (Scotland) Act 2010, section 184(1) and (4) of the 2010 Act, and paragraph 29(1) and (8) of Schedule 7 to the 2012 Act, and is prospectively amended by section 59(1) and (5) of the 2015 Act.

(42) 2007 c. 30. Section 61 was amended by section 73(5) of the Immigration Act 2014 (c. 22) and section 92(5) of the Immigration Act 2016 (c. 19) (“the 2016 Act”).

(43) Section 24B was inserted by section 34(1) and (3) of the 2016 Act.

(44) Section 147(5) was inserted by section 184(1) and (4) of the 2010 Act and amended by section 59(1) and (5) of the 2015 Act; neither the insertion nor the amendments are yet in force. Section 147(6) and (7) are inserted by regulation 3 of these Regulations.

(45) 2006 c. 13. Section 15 was amended by paragraph 61 of Schedule 9 to the Immigration Act 2014.

(46) 2014 c. 22.

(47) Section 17 of the Immigration, Asylum and Nationality Act 2006 was amended by paragraph 52(1)(b) and (2) of Schedule 9 to the Crime and Courts Act 2013 (c. 22) and section 44 of the Immigration Act 2014.

(12) For the purposes of this Act a person to whom a penalty notice under section 23 of the 2014 Act has been given is not to be treated as having been required to pay an immigration penalty if—

- (a) the person is excused payment by virtue of section 24 of that Act, or
- (b) the penalty is cancelled by virtue of section 29 or 30 of that Act.

(13) For the purposes of this Act a person to whom a penalty notice under section 23 of the 2014 Act has been given is not to be treated as having been required to pay an immigration penalty until such time as—

- (a) the period for giving a notice of objection under section 29 of that Act has expired and the Secretary of State has considered any notice given within that period, and
- (b) if a notice of objection was given within that period, the period for appealing under section 30 of that Act has expired and any appeal brought within that period has been finally determined, abandoned or withdrawn.”.

Index of defined expressions

31. In section 148 (index of defined expressions), in the table, insert at the appropriate places—

“entitled to work in the United Kingdom	section 147(6)”
“the Immigration Acts	section 147(1)”
“immigration objection notice	section 147(1)”
“immigration offence	section 147(1)”
“immigration penalty	section 147(8)”
“working illegally, in relation to the prevention of illegal working in licensed premises	section 147(1A)”.

PART 4

LATE HOURS CATERING

Amendments to the 1982 Act

32. The 1982 Act is amended as follows.

Powers of entry: immigration officers

33. After section 6 insert—

“6A Powers of entry: immigration officers

(1) Where an immigration officer has reason to believe that any premises are being used between the hours of eleven o’clock in the evening and five o’clock the following morning

for the sale to or consumption by the public of food, the officer may at any time enter the premises with a view to seeing whether an offence under any of the Immigration Acts is being committed in connection with the carrying on of that activity.

(2) The reference in subsection (1) to the sale of food is to the sale of food for consumption on as well as off the premises in which it is sold.

(3) An immigration officer exercising a power conferred by this section must, if so requested, produce evidence of that officer's authority to exercise the power.

(4) An immigration officer exercising a power conferred by this section may, if necessary, use reasonable force.

(5) A person commits an offence if the person intentionally obstructs an immigration officer exercising a power conferred by this section.

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) In this section—

“food” has the meaning given in section 1 of the Food Safety Act 1990⁽⁴⁸⁾;

“immigration officer” means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971;

“premises” includes a vehicle or vessel.”.

Late hours catering licences

34. In section 42 (late hours catering licences)⁽⁴⁹⁾ after subsection (2) insert—

“(2A) An individual who is resident in the United Kingdom may not apply for a late hours catering licence unless the individual is entitled to work in the United Kingdom.

(2B) Section 42A makes provision for the purposes of subsection (2A) about the circumstances in which a person is entitled to work in the United Kingdom.

(2C) If, notwithstanding subsection (2A), an individual who is resident but not entitled to work in the United Kingdom applies for a late hours catering licence, that application is invalid and must be treated by the Licensing Board as not having been made.”.

Amendments to Schedule 1 to the 1982 Act

35.—(1) Schedule 1 to the 1982 Act (licensing – further provisions as to the general system) is amended as follows.

(2) In paragraph 2 (notice of applications)⁽⁵⁰⁾ after sub-paragraph (1) insert—

“(1A) A licensing authority shall, as soon as an application for the grant or renewal of a late hours catering licence is made to them, send a copy of the application to the Secretary of State.”.

(3) In paragraph 3 (objections and representations)⁽⁵¹⁾, after sub-paragraph (3B) insert—

“(3C) Where the Secretary of State is given notice under paragraph 2(1A) and is satisfied that granting or renewing the application would be prejudicial to the prevention of illegal

⁽⁴⁸⁾ 1990 c. 16. There are amendments to section 1 but none is relevant.

⁽⁴⁹⁾ Section 42 was amended by section 177 of the 2010 Act.

⁽⁵⁰⁾ Paragraph 2 of Schedule 1 to the 1982 Act was amended by section 178(1) and (2)(c) and (d) of the 2010 Act, paragraph 53(1) and (6) of Schedule 7 to the 2012 Act and [S.S.I. 2006/475](#).

⁽⁵¹⁾ Paragraph 3 of Schedule 1 to the 1982 Act was amended by section 178(2)(e) of the 2010 Act and section 83(2)(a) of the 2015 Act.

working in licensed premises, the Secretary of State must give the Licensing Board a notice stating the reasons for being so satisfied.

(3D) The Secretary of State must give that notice within the period of 28 days beginning with the day on which the Secretary of State receives a copy of the application under paragraph 2(1A).”.

(4) In paragraph 5 (functions of licensing authority in relation to application for licence)(52)—

(a) after sub-paragraph (3)(a) insert—

“(aa) having regard to any notice by the Secretary of State given under paragraph 3(3C), it is appropriate for the prevention of illegal working in licensed premises to refuse the application;”;

(b) after sub-paragraph (6) insert—

“(6A) In the case of a relevant objection or representation made by the Secretary of State in relation to an application for the grant or renewal of a late hours catering licence, notification shall be made under sub-paragraph (5)(c) within 7 days of the decision to be notified by sending written notice of the decision to the Secretary of State.”.

(5) In paragraph 8 (duration of licences)(53), in sub-paragraph (8) (provisions to which paragraph 8 is subject), after “8A” insert “, 8B”.

(6) After paragraph 8A(54) insert—

“8B Late hours catering licences for persons subject to immigration control

(1) A late hours catering licence ceases to have effect if the person to whom it was granted—

- (a) ceases to be entitled to work in the United Kingdom at a time when the person is resident in the United Kingdom, or
- (b) becomes resident in the United Kingdom without being entitled to work in the United Kingdom.

(2) Section 42A (persons entitled to work in the United Kingdom) applies for the purposes of this paragraph as it applies for the purposes of section 42(2A).”.

(7) In paragraph 11 (suspension and revocation of licences)(55) in sub-paragraph (2A) (suspension and revocation of certain licences on immigration grounds), after “the suspension or revocation of” insert “a late hours catering licence.”.

(8) In paragraph 18 (appeals)(56) in sub-paragraph (8A) (sheriff may not consider immigration issues on certain appeals), after “an appeal under this paragraph relating to” insert “a late hours catering licence.”.

PART 5

TRANSITIONAL PROVISIONS RELATING TO ALCOHOL LICENSING

36. The amendments of sections 20, 21, 72, 74 and 75 of the 2005 Act made by regulations 6, 7, 16, 18 and 19 respectively do not apply in relation to applications made before the coming into force of the respective regulations.

(52) There are amendments to paragraph 5 but none is relevant.

(53) Paragraph 8 was amended by section 178(1) and (2)(g) of the 2010 Act and paragraph 32(2) of Schedule 5 to the 2016 Act.

(54) Paragraph 8A was inserted by paragraph 32(3) of Schedule 5 to the 2016 Act.

(55) Paragraph 11 was amended by section 178(1) and (2)(h) of the 2010 Act, paragraph 53(1) and (6) of Schedule 7 to the 2012 Act, section 78(1) and (3)(b) of the 2015 Act, paragraph 32(4) of Schedule 5 to the 2016 Act and [S.S.I. 2006/475](#).

(56) Paragraph 18 was amended by section 78(1) and (3)(g) of the 2015 Act and paragraph 32(5) of Schedule 5 to the 2016 Act.

37. The amendments of section 28 of the 2005 Act made by regulation 10 do not apply in relation to a premises licence granted pursuant to an application made before the coming into force of that regulation.

38. The amendment of section 77(5) of the 2005 Act made by regulation 21 does not apply in relation to a personal licence granted pursuant to an application made before the coming into force of that regulation.

39. The amendment of section 129 of the 2005 Act made by regulation 26 applies on and after the coming into force of that regulation in relation to—

- (a) premises licences and personal licences granted before, on or after the coming into force of that regulation; and
- (b) offences committed on or after the coming into force of that regulation.

40.—(1) Schedule 1 contains transitory provisions relating to the coming into force of certain provisions of the 2015 Act.

(2) The provisions in Schedule 1 do not apply to applications made before the coming into force of that Schedule.

PART 6

TRANSITIONAL PROVISIONS RELATING TO LATE HOURS CATERING

41. The amendments of section 42 of, and paragraphs 2 and 5 of Schedule 1 to, the 1982 Act made by regulations 34 and 35(2) and (4) do not apply in relation to applications (whether for the grant or renewal of a licence) made before the coming into force of the respective regulations.

42. The amendment of paragraph 8 of, and insertion of paragraph 8B into, Schedule 1 to the 1982 Act by regulation 35(5) and (6) do not apply in relation to a licence granted pursuant to an application made before the coming into force of that regulation, but will apply to a renewal of such a licence if it is renewed pursuant to an application made on or after the coming into force of that regulation.

43. The amendment of paragraph 11 of Schedule 1 to the 1982 Act made by regulation 35(7) applies on and after the coming into force of that regulation in relation to—

- (a) licences granted before, on or after the coming into force of that regulation;
- (b) offences committed on or after the coming into force of that regulation; and
- (c) an immigration penalty imposed as a result of conduct which took place on or after the coming into force of that regulation.

PART 7

CONSEQUENTIAL AMENDMENTS

44.—(1) The Personal Licence (Scotland) Regulations 2007(57) (“the 2007 Regulations”) are amended as follows.

(2) For the form in Schedule 1 to the 2007 Regulations, substitute the form in Schedule 2 to these Regulations.

(57) S.S.I. 2007/77.

(3) For the form in Schedule 2 to the 2007 Regulations, substitute the form in Schedule 3 to these Regulations.

45. For the form in Schedule 3 to the Premises Licence (Scotland) Regulations 2007**(58)**, substitute the form in Schedule 4 to these Regulations.

Date

Name
Minister of State
Home Office

SCHEDULE 1

Regulation 40

TRANSITORY PROVISIONS RELATING TO THE COMMENCEMENT OF THE 2015 ACT

46. Until the coming into force of section 49 of the 2015 Act (transfer of premises licences), regulation 11 (application for transfer of premises licence) has effect as if for that regulation there were substituted the following—

“Transfer on application of licence holder

11.—(1) Section 33 (transfer on application of licence holder) is amended as follows.

(2) After subsection (2), insert—

“(2A) An individual who is resident in the United Kingdom may not be a transferee unless the individual is entitled to work in the United Kingdom.”.

(3) After subsection (7A), insert—

“(7B) Where a Licensing Board receives an application under subsection (1), the Board must give notice of it, together with a copy of the application, to the Secretary of State.

(7C) Where the Secretary of State is given notice under subsection (7B) and is satisfied that the exceptional circumstances of the case are such that granting the application would be prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must give the Licensing Board a notice stating the reasons for being so satisfied.

(7D) The Secretary of State must give that notice within the period of 21 days beginning with the day on which the Secretary of State is notified of the application under subsection (7B).”.

(4) In subsection (8)—

(a) omit “and” at the end of paragraph (b);

(b) after paragraph (c), insert—

“, and

(d) no notice has been given under subsection (7C).”.

(5) In subsection (10) for “and any information provided under subsection (7A)” substitute “, any information provided under subsection (7A) and any notice given by the Secretary of State under subsection (7C)”.

Transfer on application of person other than licence holder

11A.—(1) Section 34 (transfer on application of person other than licence holder) is amended as follows.

(2) After subsection (1), insert—

“(1A) An individual who is resident in the United Kingdom may not apply under subsection (1) for the transfer to that person of the premises licence unless the individual is entitled to work in the United Kingdom.

(1B) If, notwithstanding subsection (1A), an individual who is resident but not entitled to work in the United Kingdom makes an application under subsection (1), the application is invalid and must be treated by the Licensing Board as not having been made.”.

SCHEDULE 2

Regulation 44(2)

FORM IN SCHEDULE 1 TO THE 2007 REGULATIONS

PERSONAL LICENCE

The holder of this licence is qualified and permitted to sell alcohol under the terms of the Licensing (Scotland) Act 2005.

Licence Number

Name and address of licence holder

Name of issuing Licensing Board

Licensing Board logo

Expiry date

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.

ANNEX A

Training record

Dates of Training	Title of Course completed	Awarding/Accrediting Body	Level attained

ANNEX B

Convictions for relevant and foreign offences

Personal licence number

Offence	Court	Date	Penalty

Immigration penalties

Personal licence number

Details of immigration penalty	Date of immigration penalty

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.

ANNEX C

Endorsements

Personal licence number

Reason for Endorsement	Name of Licensing Board	Date of commencement	Expiry date

SCHEDULE 3

Regulation 44(3)

FORM IN SCHEDULE 2 TO THE 2007 REGULATIONS

[Insert name and address of relevant Licensing Board]

Application for a personal licence

FIRST APPLICATION/RENEWAL APPLICATION (delete as appropriate)

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written or typed in black ink. Use additional sheets, if necessary. You may wish to keep a copy of the completed form for your records.

1. Your personal details. If relevant please enter details of any previous names or maiden names. Please continue on a separate sheet if necessary. Read note 1.	
TITLE (delete as appropriate): Mr Mrs Miss Ms Other (please state)	
Surname	
Forenames	
Date and Place of Birth	
NI Number	
ADDRESS WHERE ORDINARILY RESIDENT (We will use this address to correspond with you unless you complete the separate correspondence box below)	
Post town	Post code
TELEPHONE NUMBERS	
Daytime	
Evening	
Mobile	
FAX NUMBER	
E-mail address (if you would prefer us to correspond with you by e-mail)	
Address for correspondence associated with this application (if different to the address above)	
Post town	Post code
2. Entitlement to work in the UK	

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.

Read note 2		Please tick	
I am entitled to work in the UK	Yes	No	
If you have ticked yes please provide documentation to show that you are entitled to work in the UK. Read note 3.			

3. Your licensing qualification			
Read note 4		Please tick	
I hold an accredited qualification	Yes	No	
If you have ticked yes please provide a copy of your qualification with your application.			

4. FIRST APPLICATIONS ONLY			
This section should only be completed if you are submitting your first application to this Licensing Board. If answering Yes to any question please provide details below.			
Note: You may only hold one personal licence at a time		Please tick	
Do you currently hold a personal licence?	Yes	No	
Do you currently have any outstanding applications for a personal licence, with this or any other Licensing Board?	Yes	No	
Has any personal licence held by you been forfeited in the last 5 years?	Yes	No	
Licensing Board			
Licence number			
Date of issue			
Date of expiry			
Any further details			

5. RENEWAL ONLY	
This section should be completed only if you are applying for a renewal of your existing licence.	
Your personal licence must accompany your application for a renewal. If you are unable to send your personal licence, you must explain why you cannot do so in the box provided below	
Details of current personal licence	
Licensing Board	
Licence number	
Date of issue	
Date of expiry	
Any further details	
If you cannot provide your personal licence, provide a statement explaining why	
Other personal licence	

Note: You may only hold one personal licence at a time		Please tick	
I confirm that I do not hold any other personal licences other than the one submitted for renewal		Yes	No

6. CHECKLIST	
I have	Please tick yes
<ul style="list-style-type: none"> Enclosed two photographs of myself, one of which is endorsed as a true likeness of me by a person of standing in the community. Read note 5. 	
<ul style="list-style-type: none"> Enclosed documents showing that I am entitled to work in the UK. Read note 3. 	
<ul style="list-style-type: none"> Enclosed a copy of any licensing qualification I hold 	
<ul style="list-style-type: none"> Enclosed my current personal licence (renewal only) 	
<ul style="list-style-type: none"> Made or enclosed payment of the fee for the application 	

7. Previous Convictions
You must provide details below of any conviction for a relevant or foreign offence that is not considered spent under the Rehabilitation of Offenders Act 1974. Please continue on a separate sheet if necessary. If you are declaring that you have no such convictions please write "none". Read note 6.

Offence	Court	Date	Penalty

8. Immigration penalties
You must provide details below of any immigration penalty you have been required to pay unless the immigration penalty is excluded. Please continue on a separate sheet if necessary. If you are declaring that you have not been required to pay an immigration penalty please write "none". Read note 7.

Details of Immigration Penalty	Date of Immigration Penalty

9. Declaration	
The contents of this application are true to the best of my knowledge and belief	
SIGNATURE (Read note 8)	DATE

PLEASE NOTE – IT IS AN OFFENCE TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

(Criminal Law (Consolidation) (Scotland) Act 1995 Section 44(2)(b))

NOTES

Information on the Licensing (Scotland) Act 2005 is available on the website of the Scottish Parliament (<http://www.opsi.gov.uk/legislation/scotland/acts2005/20050016.htm>)

1. Change of name or address

Section 88 of the Licensing (Scotland) Act 2005 requires that a personal licence holder must, no later than one month after any change in the licence holder's name or address, give the Licensing Board which issues the licence notice of the change. It is an offence not to do so.

2. Entitlement to work in the UK

Section 147 of the Licensing (Scotland) Act 2005 provides that an individual is entitled to work in the UK if—

- (a) the individual does not under the Immigration Act 1971 require leave to enter or remain in the United Kingdom, or
- (b) the individual has been granted such leave and the leave—
 - (i) is not invalid,
 - (ii) has not ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), and
 - (iii) is not subject to a condition preventing the individual from doing work relating to the sale of alcohol on any premises.

Where an individual is on immigration bail (within the meaning of Part 1 of Schedule 10 to the Immigration Act 2016), the individual is to be treated for the above purposes as if the individual had been granted leave to enter the United Kingdom. However, any condition as to the individual's work in the United Kingdom to which the individual's immigration bail is subject, is to be treated for those purposes as a condition of leave.

It is an offence under section 24B of the Immigration Act 1971 for a person to work when they know, or have reasonable cause to believe, that they are disqualified from doing so by reason of their immigration status.

Those who employ an adult without leave or who is subject to conditions as to employment will be liable to a civil penalty under section 15 of the Immigration, Asylum and Nationality act 2006, and pursuant to section 21 of the same Act, will be committing an offence where they do so in the knowledge, or with reasonable cause to believe, that the employee is disqualified.

3. Documents which demonstrate entitlement to work in the UK

You can show that you are entitled to work in the UK by providing with this application copies or scanned copies of the following documents (which do not need to be certified). You need to provide the document or documents set out under one of the following bullet points.

- An expired or current passport showing the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK [please see note below about which sections of the passport to copy].

- An expired or current passport or national identity card showing the holder, or a person named in the passport as the child of the holder, is a national of a European Economic Area country or Switzerland.
- A Registration Certificate or document certifying permanent residence issued by the Home Office to a national of a European Economic Area country or Switzerland.
- A Permanent Residence Card issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland.
- A current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
- A current passport endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.
- A current Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, when produced in combination with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A full birth or adoption certificate issued in the UK which includes the name(s) of at least one of the holder's parents or adoptive parents, when produced in combination with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland when produced in combination with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A certificate of registration or naturalisation as a British citizen, when produced in combination with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A current passport endorsed to show that the holder is allowed to stay in the UK and is currently allowed to work and is not subject to a condition preventing the holder from doing work relating to the carrying on of a licensable activity.
- A current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the named person can currently stay in the UK and is allowed to work relation to the carrying on of a licensable activity.

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.

- A current Residence Card issued by the Home Office to a person who is not a national of a European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights or residence.
- A current Immigration Status Document containing a photograph issued by the Home Office to the holder with an endorsement indicating that the named person may stay in the UK, and is allowed to work and is not subject to a condition preventing the holder from doing work relating to the carrying on of a licensable activity when produced in combination with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A Certificate of Application, less than 6 months old, issued by the Home Office under regulation 17(3) or 18A (2) of the Immigration (European Economic Area) Regulations 2006, to a person who is not a national of a European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights of residence.
- Reasonable evidence that the person has an outstanding application to vary their permission to be in the UK with the Home Office such as the Home Office acknowledgement letter or proof of postage evidence, or reasonable evidence that the person has an appeal or administrative review pending on an immigration decision, such as an appeal or administrative review reference number.
- Reasonable evidence that a person who is not a national of a European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights of residence in exercising treaty rights in the UK including:-
 - evidence of the applicant's own identity – such as a passport,
 - evidence of their relationship with the European Economic Area family member – e.g. a marriage certificate, civil partnership certificate or birth certificate, and
 - evidence that the European Economic Area national has a right of permanent residence in the UK or is one of the following if they have been in the UK for more than 3 months:
 - (i) working e.g. employment contract, wage slips, letter from the employer,
 - (ii) self-employed e.g. contracts, invoices, or audited accounts with a bank,
 - (iii) studying e.g. letter from the school, college or university and evidence of sufficient funds; or
 - (iv) self-sufficient e.g. bank statements.

Family members of European Economic Area nationals who are studying or financially independent must also provide evidence that the European Economic Area national and any family members hold comprehensive sickness insurance in the UK. This can include a private medical insurance policy, an EHIC card or an S1, S2 or S3 form.

Original documents must not be sent to licensing authorities. If the document copied is a passport, a copy of the following pages should be provided:-

- (i) any page containing the holder's personal details including nationality;

- (ii) any page containing the holder's photograph;
- (iii) any page containing the holder's signature;
- (iv) any page containing the date of expiry; and
- (v) any page containing information indicating the holder has permission to enter or remain in the UK and is permitted to work.

If the document is not a passport, a copy of the whole document should be provided.

Your right to work will be checked as part of your licensing application and this could involve us checking your immigration status with the Home Office. We may otherwise share information with the Home Office. Your licence application will not be determined until you have complied with this guidance.

4. Licensing qualifications

Licensing qualifications are dealt with in section 91 of the Licensing (Scotland) Act 2005. In summary, to be eligible for a personal licence, an applicant must be aged 18 or over and possess a licensing qualification, and no personal licence previously held by the applicant must have been revoked within the period of 5 years ending with the day on which the application was received by the Licensing Board. Persons who are not entitled to work in the United Kingdom are not eligible for a personal licence.

5. Photographs

One of the photographs submitted with your application should be endorsed on the back. This endorsement should contain the words "I certify that this is a true likeness of (*name of applicant*)", followed by the full name of the person endorsing the photograph.

6. Convictions

Section 75 of the Act places a duty on an applicant for a personal licence to notify the Licensing Board if he or she has been convicted of any relevant or foreign offence during the time between making the application and the application being determined by the Licensing Board. Furthermore, section 82 of the Act requires personal licence holders to notify their Licensing Board of any convictions for relevant or foreign offences within one month of the licence holder being convicted.

7. Immigration penalties

An immigration penalty is a penalty under—

- (a) section 15 of the Immigration, Asylum and Nationality Act 2006, or
- (b) section 23 of the Immigration Act 2014.

Section 75 of the Act places a duty on an applicant for a personal licence to notify the Licensing Board if he or she has been required to pay an immigration penalty during the time between making the application and the application being determined by the Licensing Board. Furthermore, section 82 of the Act requires personal licence holders to notify their Licensing Board if they have been required to pay an immigration penalty within one month of the date on which the requirement to pay the penalty arose.

An immigration penalty is not required to be disclosed in this form if—

- (a) more than three years have elapsed since the date on which the penalty was imposed, and the amount of the penalty has been paid in full; or
- (b) the applicant is not to be treated as having been required to pay an immigration penalty by virtue of section 147(10) to (13) of the Licensing (Scotland) Act 2005.

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.

8. Data Protection Act 1998

The information on this form may be held on an electronic public register which may be available to members of the public on request.

SCHEDULE 4

Regulation 45

FORM IN SCHEDULE 3 TO THE PREMISES LICENCE (SCOTLAND) REGULATIONS 2007

APPLICATION FOR PREMISES LICENCE/PROVISIONAL PREMISES LICENCE*

*Delete as appropriate

Licensing (Scotland) Act 2005, section 20

APPLICANT INFORMATION Licensing (Scotland) Act 2005, section 20(1)

Question 1

Name, address and postcode of premises to be licensed.

Question 2

Particulars of applicant

2(a) Where applicant is an individual, provide full name, date and place of birth, and home address including postcode.

2(b) *Where applicant is a partnership, please provide full name, and postal address of partnership.*

2(c) *Where applicant is a company, please provide name, registered office and company registration number.*

2(d) *Where the applicant is a club or other body, please provide full name, and postal address of club or other body.*

2(e) *Where applicant is a partnership, company, club or other body, please provide the names, dates and places of birth, and home addresses of connected persons.**

*** Connected person is defined in section 147(3) of the Licensing (Scotland) Act 2005.**

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.

Question 3

Entitlement to work in the UK

3. If the applicant is an individual who is resident in the UK, is the applicant entitled to work in the UK? YES/NO*

If YES please provide documentation to show that you are entitled to work in the UK. For details of the documentation that may be provided to show entitlement to work in the UK please see the Annex to this application form.

Question 4

Previous applications

- 4 Has the applicant been refused a premises licence under section 23 of the Licensing (Scotland) Act 2005 in respect of the same premises? YES/NO*

If YES – provide full details

--

Question 5

Previous convictions

5 Has the applicant or any connected person ever been convicted of a relevant or foreign offence (a)	YES/NO*
--	---------

*If YES – provide full details

For the purpose of this Act, a conviction for a relevant offence or foreign offence is to be disregarded if it is spent for the purpose of the Rehabilitation of Offenders Act 1974

Name & position (if applicable)	Date of conviction or sentence	Court	Offence	Penalty

(a) In addition to any convictions held by the applicant at the time of application, applicants should also familiarise themselves with the contents of section 24(1) of the Licensing (Scotland) Act 2005 in respect of any convictions for relevant or foreign offences which they may receive during the period beginning with the making of the premises licence application and ending with determination of the application.

Question 6

Immigration penalties

<i>6 Has the applicant or any connected person ever been required to pay an immigration penalty?</i>	<i>YES/NO*</i>
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**If YES -- provide full details*

You must provide details below of any immigration penalty you have been required to pay unless the immigration penalty is excluded. Please continue on a separate sheet if necessary. If you are declaring that you have not been required to pay an immigration penalty please write "none". Please read the note "Immigration penalties" in the Annex to this form.

<i>Details of Immigration Penalty</i>	<i>Date of Immigration Penalty</i>

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.

DESCRIPTION OF PREMISES *Licensing (Scotland) Act 2005, section 20(2)(a)*

Question 7

7 *Description of premises (where application is submitted by a members' club, please also complete question 8)*

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Question 8

8 *To be completed by members' clubs only*

<i>Do the club's constitution and rules conform to the requirements of regulation 2 of the Licensing (Clubs) (Scotland) Regulations 2007?</i>	YES/NO*
<i>* Delete as appropriate</i>	

DECLARATION BY APPLICANT OR AGENT ON BEHALF OF APPLICANT

If signing on behalf of the applicant please state in what capacity.

The contents of this Application are true to the best of my knowledge and belief.

Signature * (see note below)

Date

Capacity APPLICANT/AGENT (delete as appropriate)

Telephone number and email address of signatory

<i>I have enclosed the relevant documents with this application – please tick the relevant boxes</i>	
<i>Operating plan</i>	
<i>Layout plan</i>	
<i>Planning certificate</i>	
<i>Building standards certificate</i>	

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.

<i>Food hygiene certificate</i>	
<i>Verification of applicant's entitlement to work in the UK</i>	

*** Data Protection Act 1998**

The information on this form may be held on an electronic public register which may be available to members of the public on request.

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.

For use by the Licensing Board only	
Application checklist	
Date received	
Fee amount	
Receipt number	
Received by (<i>INITIALS</i>)	
Consideration date	
Last date for consideration	
Date of initial hearing	
Date of any modification hearing	
Date granted/refused (delete as appropriate)	

For use by the Licensing Board only	
If application is for a premises licence	
Documents required	
Operating plan	
Layout plan	
Planning certificate	
Building standards certificate	
Food hygiene certificate	
Verification of applicant's entitlement to work in the UK	

For use by the Licensing Board only	
If application is for a provisional premises licence	
Documents required	
Provisional planning certificate	
Operating plan	
Layout plan	
Verification of applicant's entitlement to work in the UK	

ANNEX

Entitlement to work in the UK

Section 147 of the Licensing (Scotland) Act 2005 provides that an individual is entitled to work in the UK if—

- (a) the individual does not under the Immigration Act 1971 require leave to enter or remain in the United Kingdom, or
- (b) the individual has been granted such leave and the leave—
 - (i) is not invalid,
 - (ii) has not ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), and
 - (iii) is not subject to a condition preventing the individual from doing work relating to the sale of alcohol on any premises.

Where an individual is on immigration bail (within the meaning of Part 1 of Schedule 10 to the Immigration Act 2016), the individual is to be treated for the above purposes as if the individual had been granted leave to enter the United Kingdom. However, any condition as to the individual's work in the United Kingdom to which the individual's immigration bail is subject, is to be treated for those purposes as a condition of leave.

It is an offence under section 24B of the Immigration Act 1971 for a person to work when they know, or have reasonable cause to believe, that they are disqualified from doing so by reason of their immigration status.

Those who employ an adult without leave or who is subject to conditions as to employment will be liable to a civil penalty under section 15 of the Immigration, Asylum and Nationality Act 2006, and pursuant to section 21 of the same Act, will be committing an offence where they do so in the knowledge, or with reasonable cause to believe, that the employee is disqualified.

Documents which demonstrate entitlement to work in the UK

You can show that you are entitled to work in the UK by providing with this application copies or scanned copies of the following documents (which do not need to be certified). You need to provide the document or documents set out under one of the following bullet points.

- An expired or current passport showing the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK [please see note below about which sections of the passport to copy].
- An expired or current passport or national identity card showing the holder, or a person named in the passport as the child of the holder, is a national of a European Economic Area country or Switzerland.
- A Registration Certificate or document certifying permanent residence issued by the Home Office to a national of a European Economic Area country or Switzerland.
- A Permanent Residence Card issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland.

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- A current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
- A current passport endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.
- A current Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, when produced in combination with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A full birth or adoption certificate issued in the UK which includes the name(s) of at least one of the holder's parents or adoptive parents, when produced in combination with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland when produced in combination with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A certificate of registration or naturalisation as a British citizen, when produced in combination with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A current passport endorsed to show that the holder is allowed to stay in the UK and is currently allowed to work and is not subject to a condition preventing the holder from doing work relating to the carrying on of a licensable activity.
- A current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the named person can currently stay in the UK and is allowed to work relation to the carrying on of a licensable activity.
- A current Residence Card issued by the Home Office to a person who is not a national of a European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights or residence.
- A current Immigration Status Document containing a photograph issued by the Home Office to the holder with an endorsement indicating that the named person may stay in the UK, and is allowed to work and is not subject to a condition preventing the holder from doing work relating to the carrying on of a licensable activity when produced in combination with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

- A Certificate of Application, less than 6 months old, issued by the Home Office under regulation 17(3) or 18A (2) of the Immigration (European Economic Area) Regulations 2006, to a person who is not a national of a European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights of residence.
- Reasonable evidence that the person has an outstanding application to vary their permission to be in the UK with the Home Office such as the Home Office acknowledgement letter or proof of postage evidence, or reasonable evidence that the person has an appeal or administrative review pending on an immigration decision, such as an appeal or administrative review reference number.
- Reasonable evidence that a person who is not a national of a European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights of residence in exercising treaty rights in the UK including:-
 - evidence of the applicant's own identity – such as a passport,
 - evidence of their relationship with the European Economic Area family member – e.g. a marriage certificate, civil partnership certificate or birth certificate, and
 - evidence that the European Economic Area national has a right of permanent residence in the UK or is one of the following if they have been in the UK for more than 3 months:
 - (i) working e.g. employment contract, wage slips, letter from the employer,
 - (ii) self-employed e.g. contracts, invoices, or audited accounts with a bank,
 - (iii) studying e.g. letter from the school, college or university and evidence of sufficient funds; or
 - (iv) self-sufficient e.g. bank statements.

Family members of European Economic Area nationals who are studying or financially independent must also provide evidence that the European Economic Area national and any family members hold comprehensive sickness insurance in the UK. This can include a private medical insurance policy, an EHIC card or an S1, S2 or S3 form.

Original documents must not be sent to licensing authorities. If the document copied is a passport, a copy of the following pages should be provided:-

- (i) any page containing the holder's personal details including nationality;
- (ii) any page containing the holder's photograph;
- (iii) any page containing the holder's signature;
- (iv) any page containing the date of expiry; and
- (v) any page containing information indicating the holder has permission to enter or remain in the UK and is permitted to work.

If the document is not a passport, a copy of the whole document should be provided.

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.

Your right to work will be checked as part of your licensing application and this could involve us checking your immigration status with the Home Office. We may otherwise share information with the Home Office. Your licence application will not be determined until you have complied with this guidance.

Immigration penalties

An immigration penalty is a penalty under—

- (a) section 15 of the Immigration, Asylum and Nationality Act 2006, or
- (b) section 23 of the Immigration Act 2014.

An immigration penalty is not required to be disclosed in this form if—

- (a) more than three years have elapsed since the date on which the penalty was imposed, and the amount of the penalty has been paid in full; or
- (b) the applicant is not to be treated as having been required to pay an immigration penalty by virtue of section 147(10) to (13) of the Licensing (Scotland) Act 2005.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations extend to Scotland and are made under section 36 of the Immigration Act 2016 (c. 19) (“the 2016 Act”), which allows regulations to make provision for Scotland which has similar effect to that which Schedule 4 to the 2016 Act makes for England and Wales. Schedule 4 to the 2016 Act makes amendments to the Licensing Act 2003 (c. 17) relating to illegal working. These Regulations make similar effect by amending the Licensing (Scotland) Act 2005 (asp 16) (“the 2005 Act”) and the Civic Government (Scotland) Act 1982 (c. 45) (“the 1982 Act”). These Regulations place restrictions on the holding of alcohol or late night catering licences by people who are not entitled to work in the United Kingdom, or people who have been convicted of immigration offences or required to pay immigration penalties.

Part 2 of the Regulations amends section 147 of the 2005 Act (interpretation) and inserts a new section 42A into the 1982 Act (persons entitled to work in the United Kingdom), to provide a definition of an individual who is entitled to work in the United Kingdom.

Part 3 of the Regulations amends the 2005 Act. In respect of premises licences, regulation 6 amends section 20 of the 2005 Act to provide that an individual who is resident in the UK may not apply for a premises licence unless the individual is entitled to work in the UK. Regulation 7 makes provision that the Secretary of State should be notified of applications for premises licences. Regulation 10 amends section 28 of the 2005 Act to provide that a premises licence lapses if the licence holder ceases to be entitled to work in the United Kingdom. Regulations 11 and 12 amend section 33 and section 36 respectively of the 2005 Act to make provision in respect of applications for the transfer or review of a premises licence.

In respect of personal licences, regulation 16 amends section 72 of the 2005 Act to require a personal licence application to state whether the applicant has been required to pay an immigration penalty and regulation 17 inserts a new section 73B into the 2005 Act to provide for the Secretary of State to be notified of an application for a personal licence.

Regulation 18 amends section 74 of the 2005 Act to make provision for the determination of personal licence applications where the Secretary of State has given an immigration objection notice. Regulation 19 amends section 75 of the 2005 Act to ensure that an applicant must notify a Licensing Board of convictions, including immigration offences, and a requirement to pay an immigration penalty. Regulation 21 amends section 77(5) of the 2005 Act to provide that a personal licence lapses if the licence holder ceases to be entitled to work in the UK.

Regulation 27 amends section 131 of the 2005 Act to provide that on an appeal in relation to a licensing decision, the court cannot entertain any question as to whether a person should be, or should have been, granted leave to enter or remain in the United Kingdom or a person has, after the date of the licensing decision, been granted leave to enter or remain in the United Kingdom. Regulation 29 adds a new section 138A to the 2005 Act to make provision for immigration officers to enter any premises where alcohol is being sold for the purpose of determining whether an immigration offence is being committed in connection with the sale of alcohol.

Part 4 of the Regulations relates to late hours catering licences. Regulation 33 adds a new section 6A to the 1982 Act which provides an immigration officer with the power at any time to enter premises for the purpose of determining whether an immigration offence is being committed in connection with the carrying on of late hours catering activities. Regulation 34 provides that an individual who is resident in the United Kingdom may not apply for a late hours catering licence unless the individual is entitled to work in the United Kingdom.

Regulation 35 amends Schedule 1 to the 1982 Act to require licensing authorities to notify the Secretary of State of applications for late hours catering licences and their decisions. It also makes provision for the cessation of late hours catering licences in the event that a licence holder who is resident in the United Kingdom ceases to be entitled to work in the United Kingdom. It also makes similar provision to regulation 27 in relation to late hours catering licences.

Parts 5 and 6 of the Regulations make transitional provision in relation to alcohol licensing and late hours catering respectively. Regulation 40 and Schedule 1 make transitory provision in relation to alcohol licensing pending the commencement of section 49 of the Air Weapons and Licensing (Scotland) Act 2015 (2015 asp 10). Part 7 of the Regulations and Schedules 2, 3 and 4 make consequential amendments by inserting new forms (containing requirements relating to the immigration provision made by these Regulations) into the Personal Licence (Scotland) Regulations 2007 (S.S.I. 2007/77) and the Premises Licence (Scotland) Regulations 2007 (S.S.I. 2007/452).

A regulatory impact assessment was carried out at the time of the passage of the Immigration Act 2016 in relation to the UK-wide impact of the policy to which these Regulations give effect in Scotland. That impact assessment is available from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/619768/VIA_Alcohol_LNR_Licensing_20170504.pdf . A separate impact assessment has not been carried out for these Regulations.