

## POLICY NOTE

### THE LICENSING (AMENDMENT) (EU EXIT) (SCOTLAND) REGULATIONS 2019

#### SSI 2019/6

1. The above instrument was made in exercise of the powers conferred by paragraphs 1 and 3 of schedule 2 and paragraph 21 of schedule 7 of the European Union (Withdrawal) Act 2018. The instrument is subject to negative procedure.

**Purpose of the instrument.** This instrument is being made in order to address deficiencies in licensing legislation arising from the withdrawal of the United Kingdom (UK) from the European Union (EU).

#### Policy Objectives

2. The policy objective is to ensure that the relevant licensing legislation continues to operate effectively following the UK's exit from the EU on 29 March 2019 in the event of no deal.

#### Explanation of the law being amended by the regulations

3. The Licensing Scotland Act 2005 is the main piece of legislation that controls the sale of alcohol. It provides for offences relating to the sale of alcohol to a child or young person and to the delivery of alcohol by or to a child or young person.
4. The Crossbows Act 1987 and the Criminal Justice Act 1988, provide for offences in relation to the sale and letting or hire of crossbows and knives.
5. Each of these Acts provide for a defence where the person can show that they believed that the child or young person was aged 18 or over and that they had taken reasonable steps to establish that person's age. Acceptable proof of age currently includes "a European Union photocard driving licence". These regulations add a "UK driving licence" as proof of age to the relevant licensing legislation to ensure both driving licences issued in the UK as well as those issued in EU member States are recognised as proof of age when the UK withdraws from the EU.
6. The licensing regime for sex shops within the Civic Government (Scotland) Act 1982 currently prevents the granting of a licence to a person who is not resident in a member state of the EU or was not resident throughout the 6 month period prior to the application being made. It also prevents the granting of a licence to a body corporate not incorporated in a member state of the EU.
7. The extension of the residency qualification to EU member states was required to meet the UK's obligations under the Service Directive 2006/123/EC which was implemented in the UK by the Provision of Services Regulations 2009/2999. As the UK will no longer be a member state of the EU following EU exit these restrictions for obtaining a licence will prevent the legislation working effectively. The relevant provisions in the Civic Government (Scotland) Act 1982 have therefore been amended so that the residence

conditions are within the UK. The approach adopted in making this amendment is to revert to an earlier version of this legislation. This falls within the parameters of the enabling powers in the EU (Withdrawal) Act 2018 and takes account of the Scottish Government's position in relation to the EU Services Directive and Provision of Services Regulations 2009. Provision is made in relation to these in the Provision of Services (Amendment) (EU Exit) Regulations 2018 which were laid in the UK Parliament on 12 December 2018. Scottish Ministers consented to the inclusion of devolved matters in these Regulations which were notified to the Scottish Parliament on 29 October, considered and the consent approved by the Economy, Energy and Fair Work Committee on 29 November.

8. The Sale of Alcohol to Children and Young Persons (Scotland) Regulations 2007, as amended by the Sale of Alcohol to Children and Young Persons (Scotland) Amendment Regulations 2013, prescribe acceptable proof of age documentation in addition to that provided for in the primary Legislation. Regulation 2(2)(c) prescribes a national identity card issued by an EU state (other than the UK)". As the UK will no longer be a member state of the EU following EU Exit the words "other than the United Kingdom" are no longer necessary and have been removed.

#### **Reasons for and effect of the proposed change or changes on retained EU law**

9. These minor technical changes to licensing legislation correct legislative deficiencies arising as a result of the UK leaving the EU. They have been made to ensure that the legislation continues to operate effectively following EU Exit on 29 March 2019.

#### **Statements required by European Union (Withdrawal) Act 2018**

##### **Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate**

The Minister for Community Safety, Ash Denham has made the following statement.

"In my view the Licensing (Amendment) (EU Exit) (Scotland) Regulations 2019 do no more than is appropriate. This is the case because they ensure that the relevant licensing legislation continues to operate effectively by including a UK Driving Licence as an additional appropriate form of identification. The regulations also revert limiting applications for a sex shop licence to an earlier version of the legislation. This falls within the parameters of the enabling powers in the EU (Withdrawal) Act 2018 and takes account of the Scottish Government's position in relation to the EU Services Directive and Provision of Services Regulations 2009, which is described in its notification to the Scottish Parliament for the relevant UK EU exit SI."

##### **Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action**

The Minister for Community Safety, Ash Denham has made the following statement.

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action as they enable the relevant licensing

legislation to operate effectively following the UK's exit from the EU. The changes made by the regulations fall within the parameters of the enabling powers in the EU (Withdrawal) Act 2018”.

**Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation**

The Minister for Community Safety, Ash Denham has made the following statement

“In my view the Licensing (Amendment) (EU Exit) (Scotland Regulations 2019 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

**Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010**

The Minister for Community Safety, Ash Denham has made the following statement

“In my view the Licensing (Amendment) (EU Exit) (Scotland Regulations 2019 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

**Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament**

**Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare**

N/A

**Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)**

N/A

**An indication of how the regulations should be categorised in relation to the significance of the change proposed.**

Medium - These amendments are minor and technical however, if they are not made presentational difficulties and reputational risk on our ability to deliver may arise.

**Statement setting out the Scottish Ministers' reasons for their choice of procedure**

The Minister for Community Safety, Ash Denham has made the following statement regarding the use of negative procedure for the Licensing (Amendment) (EU Exit) (Scotland Regulations 2019.

“Negative procedure is considered appropriate as these minor and technical amendments to relevant licensing legislation do no more than is necessary to ensure that the legislation continues to operate effectively following the UK’s exit from the EU and they do not impose any additional financial burdens on local authorities or businesses. The Regulations do not include provision which falls within paragraph 1(2) of schedule 7 to the European Union (Withdrawal) Act 2018.”

### **Further information**

#### **Consultation**

No consultation was carried out in relation to the Licensing Amendment (EU Exit) (Scotland) Regulations. However, The UK Government did confirm the term “UK driving licence” was appropriate. As mentioned above, these regulations are required to ensure that the legislation continues to operate effectively following EU Exit on 29 March 2019.

#### **Impact Assessments**

Full impact assessments have not been prepared for this instrument. The regulations are required to assist a seamless EU Exit and the impact is thought to be positive as the regulations will ensure that the relevant licensing legislation continues to operate effectively.

#### **Financial Effects**

The Minister for Community Safety is content that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Justice Directorate  
Criminal Law, Practice and Licensing Unit

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