

SCHEDULES

SCHEDULE 4

LICENSING ACT 2003: AMENDMENTS RELATING TO ILLEGAL WORKING

PART 3

PERSONAL LICENCES

- 12 Part 6 of the Licensing Act 2003 (personal licences) is amended as follows.
- 13 (1) Section 113 (meaning of “relevant offence” and “foreign offence”) is amended as follows.
- (2) In the heading, for “and “foreign offence”” substitute “, “immigration offence”, “foreign offence” and “immigration penalty””.
- (3) After subsection (2) insert—
- “(2A) In this Part “immigration offence” means—
- (a) an offence referred to in paragraph 7A of Schedule 4, or
- (b) an offence listed in paragraph 24 or 25 of Schedule 4 that is committed in relation to an offence referred to in paragraph 7A of that Schedule.”
- (4) At the end insert—
- “(4) In this Part “immigration penalty” means a penalty under—
- (a) section 15 of the Immigration, Asylum and Nationality Act 2006 (“the 2006 Act”), or
- (b) section 23 of the Immigration Act 2014 (“the 2014 Act”).
- (5) For the purposes of this Part 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.
- (6) For the purposes of this Part 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

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brought within that period has been finally determined, abandoned or withdrawn.

- (7) For the purposes of this Part 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.
- (8) For the purposes of this Part 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.”

- 14 (1) Section 115 (period of validity of personal licence) is amended as follows.
- (2) In subsection (2), after “subsections” insert “(2A),”.
- (3) After subsection (2) insert—
- “(2A) A personal licence ceases to have effect if the holder of the licence ceases to be entitled to work in the United Kingdom.”
- 15 (1) Section 120 (determination of application for grant) is amended as follows.
- (2) In subsection (2)—
- (a) after paragraph (a) insert—
 - “(aa) he is entitled to work in the United Kingdom,”;
 - (b) in paragraph (d), at the end insert “or required to pay an immigration penalty”.
- (3) In subsection (3), for “paragraph (a), (b) or (c)” substitute “any of paragraphs (a) to (c)”.
- (4) In subsection (4), for “(a), (b) and (c)” substitute “(a) to (c)”.
- (5) In subsection (5)—
- (a) omit the “and” at the end of paragraph (a);
 - (b) at the end of paragraph (b) insert “and
 - (c) the applicant having been required to pay any immigration penalty.”.
- (6) After subsection (5) insert—
- “(5A) If it appears to the authority that the applicant meets the conditions in paragraphs (a) to (c) of subsection (2) but fails to meet the condition in paragraph (d) of that subsection by virtue of having been—
- (a) convicted of an immigration offence,

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- (b) convicted of a foreign offence that the authority considers to be comparable to an immigration offence, or
 - (c) required to pay an immigration penalty,
- the authority must give the Secretary of State a notice to that effect.

(5B) Where, having regard to—

- (a) any conviction of the applicant for an immigration offence,
- (b) any conviction of the applicant for a foreign offence which the Secretary of State considers to be comparable to an immigration offence, and
- (c) the applicant having been required to pay any immigration penalty, 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 14 days beginning with the day the Secretary of State received the notice under subsection (5A), give the authority a notice stating the reasons for being so satisfied (an “immigration objection notice”).”

(7) In subsection (6), for “is given within that period (or the notice is withdrawn)” substitute “or immigration objection notice is given within the period of 14 days referred to in subsection (5) or (5B) (as the case may be), or any such notice given is withdrawn.”.

(8) In subsection (7)—

- (a) in the words before paragraph (a), for “In any other case,” substitute “Where an objection notice or an immigration objection notice is given within the period of 14 days referred to in subsection (5) or (5B) (as the case may be), and not withdrawn,”;
- (b) in paragraph (a)—
 - (i) omit “objection”;
 - (ii) for “chief officer of police” substitute “person who gave the notice”;
- (c) for paragraph (b) substitute—
 - “(b) having regard to the notice, must—
 - (i) where the notice is an objection notice, reject the application if it considers it appropriate for the promotion of the crime prevention objective to do so, or
 - (ii) where the notice is an immigration objection notice, reject the application if it considers it appropriate for the prevention of illegal working in licensed premises to do so.”

(9) After subsection (7) insert—

“(7A) An application that is not rejected by the authority under subsection (7)(b) must be granted by it.”

16 (1) Section 122 (notification of determinations) is amended as follows.

(2) In subsection (1)—

- (a) after “objection notice” insert “or the Secretary of State gave an immigration objection notice”;

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- (b) after “(which” insert “, in either case,”.
- (3) After subsection (2) insert—
 - “(2A) Where the Secretary of State gave an immigration objection notice (which was not withdrawn) the notice under subsection (1)(a) or (2), as the case may be, must also be given to the Secretary of State.”
- (4) In subsection (3), in the definition of “objection notice”, for “has” substitute “and “immigration objection notice” have”.
- 17 (1) Section 123 (duty to notify licensing authority of convictions during application period) is amended as follows.
 - (2) In the heading, after “convictions” insert “etc”.
 - (3) In subsection (1)—
 - (a) after “application period” insert “, or is required to pay an immigration penalty during that period”;
 - (b) after “conviction” insert “or the requirement to pay (as the case may be)”.
- 18 (1) Section 124 (convictions coming to light after grant) is amended as follows.
 - (2) In subsection (1)—
 - (a) for “(“the offender”)” substitute “(“the licence holder”)”;
 - (b) at the end insert “or was required during that period to pay an immigration penalty”.
 - (3) In subsection (3)—
 - (a) in paragraph (a)—
 - (i) for “applicant” substitute “licence holder”;
 - (ii) for “, and” substitute “which occurred before the end of the application period,”;
 - (b) in paragraph (b), after “relevant offence” insert “and which occurred before the end of the application period”;
 - (c) at the end of paragraph (b) insert “and
 - (c) the licence holder having been required before the end of the application period to pay any immigration penalty,”;
 - (d) in the words after paragraph (b), omit “which occurred before the end of the application period,”.
 - (4) After subsection (3) insert—
 - “(3A) Where the licence holder was (during the application period)—
 - (a) convicted of an immigration offence,
 - (b) convicted of a foreign offence that the licensing authority considers to be comparable to an immigration offence, or
 - (c) required to pay an immigration penalty,
 the authority must give the Secretary of State a notice to that effect.
 - (3B) Where, having regard to—
 - (a) any conviction of the licence holder for an immigration offence which occurred before the end of the application period,

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- (b) any conviction of the licence holder for a foreign offence which the Secretary of State considers to be comparable to an immigration offence and which occurred before the end of the application period, and
- (c) the licence holder having been required before the end of the application period to pay any immigration penalty,

the Secretary of State is satisfied that continuation of the licence would be prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must, within the period of 14 days beginning with the day the Secretary of State received the notice under subsection (3A), give the authority a notice stating the reasons for being so satisfied (an “immigration objection notice”).”

(5) In subsection (4)—

- (a) in the words before paragraph (a), for “is given within that period” substitute “or an immigration objection notice is given within the period of 14 days referred to in subsection (3) or (3B), as the case may be,”;
- (b) in paragraph (a)—
 - (i) omit “objection”;
 - (ii) for “holder of the licence, the chief officer of police” substitute “licence holder, the person who gave the notice”;
- (c) in paragraph (b), for the words from “revoke” to the end of the paragraph substitute “—
 - (i) where the notice is an objection notice, revoke the licence if it considers it appropriate for the promotion of the crime prevention objective to do so, or
 - (ii) where the notice is an immigration objection notice, revoke the licence if it considers it appropriate for the prevention of illegal working in licensed premises to do so.”

(6) After subsection (5) insert—

“(5A) Where the authority revokes or decides not to revoke a licence under subsection (4)(b)(ii) it must also notify the Secretary of State of the decision and its reasons for making it.”

- 19 (1) Section 125(3) (form of personal licence) is amended as follows.
- (2) For “of each” substitute “of—
 - (a) each”.
 - (3) At the end insert—

“(b) each immigration penalty that the holder has been required to pay and the date of each notice by which such a penalty was imposed.”
- 20 (1) Section 132 (licence holder’s duty to notify licensing authority of convictions) is amended as follows.
- (2) In the heading, after “convictions” insert “etc”.
 - (3) After subsection (2) insert—

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“(2A) Subsection (2B) applies where the holder of a personal licence is required to pay an immigration penalty.

(2B) The holder must, as soon as reasonably practicable after being required to pay the penalty, give the relevant licensing authority a notice containing details of the penalty, including the date of the notice by which the penalty was imposed.”

(4) In subsection (3), after “(2)” insert “or (2B)”.

21 In Schedule 4 (personal licence: relevant offences), after paragraph 7 insert—
“7A An offence under any of the Immigration Acts.”