

[This instrument contains a draft outline of proposals for secondary legislation arising out of clause 34 of the Immigration Bill. It is a working draft and has been prepared purely for illustrative purposes and for assisting with discussion during the passage of the Bill. Further work and discussions will be required before the Regulations can be finalised.]

Draft Regulations laid before Parliament under section 34(2) of the Immigration Act 2016, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2014 No.

IMMIGRATION

**The [Draft] Immigration (Alcohol Licensing) (Scotland)
Regulations ******

Made - - - - - ****

Coming into force - - - - - ****

The Secretary of State, in exercise of the powers conferred by section 34 of the Immigration Act 2016(a), makes the following Regulations.

PART 1

CITATION, COMMENCEMENT AND INTERPRETATION

Citation and commencement

1. These Regulations may be cited as the [Draft] Immigration (Alcohol Licensing) (Scotland) Regulations [...] and come into force on [DATE TO BE INSERTED].

Interpretation

2. In these Regulations, “the 2005 Act” means the Licensing (Scotland) Act 2005(b).

PART 2

ENTITLEMENT TO WORK IN THE UNITED KINGDOM

Amendment to section 147 of the 2005 Act

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

(a)

(b) 2005 asp 16, as amended by the Criminal Justice and Licensing (Scotland) Act 2010, 2010 asp 13 and the Air Weapons and Licensing (Scotland) Act 2015, 2015 asp 10.

“(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 7 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.”

PART 3

PREMISES LICENCES

Amendments to Part 3

4. Part 3 of the 2005 Act (premises licences) is amended as follows.

Section 20

5. In section 20 (applicant for premises licence), after subsection (1) insert—

“(1A) But 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.”

Section 21

6. In section 21(1) (notification of application)—

- (a) omit “and” at the end of paragraph (d),
- (b) after paragraph (e) insert “, and
- (f) the Secretary of State.”

Section 23

7. In section 23 (determination of premises licence application), after subsection (8) insert—

“(8A) Where the Secretary of State objected to or made representations concerning the application, the Licensing Board must give notice of its decision to the Secretary of State.”

Section 28

8. In section 28 (period of effect of premises licence)—

- (a) in subsection (2), after “paragraphs” insert “(aa) or”, and
- (b) in subsection (5), after paragraph (a) insert—

- “(aa) 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.”.

Section 33

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

(2) After subsection (1A) insert—

“(1B) 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.”

(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, 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.

(7D) The Secretary of State must give that notice within the period of 14 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 provided under subsection (7C),”.

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

(6) In subsection (11), after paragraph (a) insert—

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

Section 36

10. In section 36 (application for review of premises licence), after subsection (2), insert—

“(2A) Where a Licensing Board receives a premises licence review application, the Board must give notice of the application to the Secretary of State unless the Board intends to refuse the application under subsection (6).”

Section 37

11. In section 37 (review of premises licence on Licensing Board’s initiative), 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.”

Section 38

12. In section 38(3)(b) (review hearing)—

- (a) omit “and” at the end of sub-paragraph (i),
- (b) after sub-paragraph (i) insert—
 - “(ia) the Secretary of State, and”.

Section 39

- 13.** In section 39A(2) (notification of determinations), after paragraph (a) insert—
“(ab) in the case where the Secretary of State has provided information to the Licensing Board for the purposes of the review hearing, the Secretary of State,”.

PART 4

PERSONAL LICENCES

Amendments to Part 6

- 14.** Part 6 of the 2005 Act (personal licences) is amended as follows.

Section 72

- 15.**—(1) Section 72 (application for personal licence) is amended as follows.
- (2) In subsection (1), after “more” insert “who is entitled to work in the United Kingdom.”.
 - (3) After subsection (2) insert—
 - “(3) A personal licence application must state whether the applicant has been required to pay an immigration penalty.”.

Section 73A

- 16.** After section 73A, 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 the Secretary of State received the notice under subsection (1), give the Licensing Board a notice stating the reasons for being so satisfied (an “immigration objection notice”).”

Section 74

- 17.**—(1) Section 74 (determination of personal licence application) is amended as follows.
- (2) In subsection (2), after paragraph (ca) insert—
 - “(cb) the Board has not received an immigration objection notice within the period referred to in section 73B(2),”.
 - (3) In subsection (3), after paragraph (a) insert—
 - “(aa) the applicant is entitled to work in the United Kingdom,”.
 - (4) After subsection (5AA), insert—
 - “(5AB) 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 (5B), for “or (5AA)” insert “, (5AA) or (5AB)”.
- (6) After subsection (6), insert—
 - “(6ZA) At a hearing under subsection (5AB), the Licensing Board must, after having regard to the immigration objection notice and any information provided under section 73(5) or 73A(2)—
 - (a) if satisfied that a ground for refusal applies, refuse the application, or
 - (b) if not so satisfied, grant the application.”

Section 75

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

- (2) In subsection (1), after “offence”, in the second place where it occurs, insert “or required to pay an immigration penalty”.
- (3) In subsection (2), after “conviction”, in both places where it occurs, insert “or the penalty”.
- (4) In subsection (3)—
 - (a) in paragraph (a), after “offence” insert “or the penalty”, and
 - (b) in paragraph (b), after “conviction” insert “or the penalty”.
- (5) In subsection (4)(b), at the beginning insert “in the case of a notice which specifies a conviction”.
- (6) After subsection (7) 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 which is similar in nature to an immigration offence, or
 - (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 the Secretary of State received the notice under subsection (7A), give the Licensing Board a notice stating the reasons for being so satisfied (an “immigration objection notice”).”
- (7) For subsection (8) substitute—
 - “(8) The Licensing Board must resume consideration of the personal licence application and determine it in accordance with section 74 on the later of—
 - (a) receipt of the chief constable's notice under subsection (6),
 - (b) receipt of an immigration objection notice within the period referred to in subsection (7B),
 - (c) the expiry of that period without the Board receiving an immigration objection notice.”
- (8) In subsection (9)—
 - (a) omit “and” at the end of paragraph (b),
 - (b) after paragraph (c) insert “, and

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

(9) The heading of the section becomes “**Applicant's duty to notify Licensing Board of convictions and penalties**”.

Section 76

19. In section 76(2) (issue of licence), after paragraph (d) insert—

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

Section 77

20. 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,”.

Section 78

21. In section 78(5) (renewal of personal licence), after “73A” insert “, 73B”.

Section 79

22. In section 79(2) (notification of determinations), after paragraph (a) insert—

“(aa) in the case where the Board has received an immigration objection notice under section 73B(2), the Secretary of State,”.

Section 82

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

(2) In subsection (1), after “offence”, insert “or required to pay an immigration penalty”.

(3) In subsection (2), after “conviction”, in both places where it occurs, insert “or the penalty”.

(4) In subsection (3)—

(a) omit “of conviction”,

(b) in paragraph (a)(i), after “offence” insert “or the penalty”, and

(c) in paragraph (a)(ii), after “conviction” insert “or the penalty”.

(5) The heading of the section becomes “**Licence holder's duty to notify Licensing Board of convictions and penalties**”.

Section 83

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

(2) In subsection (1)(b), after “offence”, in the second place where it occurs, insert “or required to pay an immigration penalty”.

(3) For subsection (2), 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 where the licence holder has been—

- (i) convicted of an immigration offence,
 - (ii) convicted of a foreign offence which is similar in nature to an immigration offence, or
 - (iii) required to pay an immigration penalty.”
- (4) In subsection (3), for “(2)” substitute “(2)(a)”.
- (5) After subsection (5), 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 the Secretary of State received the notice under subsection (2A), give the Licensing Board a notice stating the reasons for being so satisfied (an “immigration objection notice”).”
- (6) In subsection (6)—
- (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), after “subsection (5)” insert “or receives an immigration objection notice within the period referred to in subsection (5A)”.
- (8) In subsection (7A)—
- (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)—
- (a) in paragraph (a)(i), after “conviction” insert “or penalty”,
 - (b) omit “and” at the end of paragraph (a)(i),
 - (c) after paragraph (a)(ii), insert “, and
 - “(iii) any immigration objection notice,”,
 - (d) omit “and” at the end of paragraph (b)(i), and
 - (e) after paragraph (b)(ii), insert “, and
 - “(iii) in the case where an immigration objection notice has been received, the Secretary of State,”.
- (10) In subsection (10)—
- (a) omit “and” at the end of paragraph (c), and
 - (b) after paragraph (b) insert “, and
 - “(ba) in the case where an immigration objection notice has been received, the Secretary of State.”
- (11) In subsection (11), in the definition of “notice of conviction”, after “82(2)” insert “and includes a notice of an immigration penalty under section 82(2)”.
- (12) The heading of the section becomes “**Procedure where Licensing Board receives notice of conviction or penalty**”.

PART 5

RIGHTS OF ENTRY

Section 138

25. After section 138 of the 2005 Act, insert—

“138A Powers of entry and inspection: immigration officers

- (1) An immigration officer may, at any time, enter and inspect—
 - (a) any licensed premises for the purpose of determining whether an immigration offence is being committed in connection with the carrying on of activities in the premises, or
 - (b) any premises (other than licensed premises) if the conditions in subsection (2) are satisfied, for the purpose of determining whether an immigration offence is being committed in connection with the carrying on of activities in the premises.
- (2) The conditions referred to in subsection (1)(b) are that—
 - (a) food and drink is sold for consumption on the premises, and
 - (b) the immigration officer has reason to believe that the premises are premises on which alcohol is sold for consumption on the premises in breach of section 1(1).
- (3) Where an immigration officer exercises the power in subsection (1) in relation to any licensed premises, the persons specified in subsection (4) must—
 - (a) give the officer such assistance,
 - (b) provide the officer with such information, and
 - (c) produce to the officer such documents,as the officer may reasonably require.
- (4) The persons referred to in subsection (3) are—
 - (a) the holder of the premises licence,
 - (b) in the case of licensed premises in respect of which a premises licence has effect, the premises manager, and
 - (c) in any case, any person working on the premises at the time the officer is exercising the power.
- (5) An immigration officer exercising the power conferred by subsection (1) may, if necessary, use reasonable force.
- (6) A person who—
 - (a) intentionally obstructs an immigration officer in the exercise of a power under subsection (1), or
 - (b) refuses or fails, without reasonable excuse, to comply with a requirement made under subsection (3),commits an offence.
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) In this section, “immigration officer” means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971.
- (9) In this section, references to “licensed premises” do not include licensed premises in respect of which an occasional licence has effect.”

PART 6
APPEALS

Section 131

- 26.** In section 131 of the Licensing (Scotland) Act 2005 (appeals), after subsection (4) insert—
- “(4A) 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.”

PART 7 GENERAL

Section 129

27. In section 129(1) (meaning of relevant offence), after subsection (1) insert—

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

Section 134

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

“(3) Subsection (1) does not apply to a notice mentioned in section 23(8A), 33(7B), 33(7C), 36(2A), 37(2A), 73B(1), 73B(2), 75(7A), 75(7B), 83(2)(b) or 83(5A).”

Section 147

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

(2) In subsection (1), insert at the appropriate place—

““immigration offence” means an offence under any of the Immigration Acts (within the meaning given by section 61 of the UK Borders Act 2007),”.

(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.”

(4) After subsection (7), insert—

“(8) In this Act “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”).

(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.

(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.

(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.”

Section 148

30. 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)”
“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 8

TRANSITIONAL PROVISIONS

31. The amendments of sections 20, 21, 33, 72, 74 and 75 of the 2005 Act made by regulations 5, 6, 9, 15, 17 and 18 respectively do not apply in relation to applications made before the coming into force of the respective regulations.

32. The amendment of section 28(5) of the 2005 Act made by regulation 8(b) does not apply in relation to a premises licence granted pursuant to an application made before the coming into force of that regulation.

33. Regulation 32 does not prevent the amendment made by regulation 8(b) from applying in relation to a premises licence—

- (a) granted before the coming into force of that regulation, and
- (b) transferred after the coming into force of that regulation.

34. The amendment of section 77(5) of the 2005 Act made by regulation 20 does not apply in relation to a personal licence granted pursuant to an application made before the coming into force of that regulation.

35. Regulation 34 does not prevent the amendment made by regulation 20 from applying in relation to a personal licence—

- (a) granted before the coming into force of that regulation, and
- (b) renewed after the coming into force of that regulation.

36. The amendment of section 129(1) of the Licensing (Scotland) Act 2005 made by regulation 27 applies on or 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 before, on or after the coming into force of that regulation.

Home Office
Date

Name
Minister of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply to Scotland and amend the Licensing (Scotland) Act 2005 (2005 asp 16) (“the 2005 Act”). They make provision under section 34 of the Immigration Act 2016 (2016 c xx) which has similar effect to the amendments made to the Licensing Act 2003 (2003 c. 17) by Schedule 3 to the 2016 Act.

Part 2 of the Regulations amends section 147 of the 2005 Act (interpretation) to provide a definition of an individual who is entitled to work in the United Kingdom.

Part 3 of the Regulations amends Part 3 of the 2005 Act which deals with premises licences. Regulation 5 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 6 makes provision that the Secretary of State should be notified of applications for personal licences and regulation 7 that she should be notified of a Licensing Board decision where she has intervened. Regulation 8 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. Regulation 9 amends section 33 of the 2005 Act to make similar provision in respect of applications for the transfer of a premises licence and regulation 10 amends section 36 of the 2005 Act so that the Secretary of State is notified of applications for a review of a premises licence and a premises licence review proposal.

Part 4 of the Regulations amends Part 6 of the 2005 Act which deals with personal licences. Regulation 15 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 16 amends section 73A of the 2005 Act to provide for the Secretary of State to be notified of an application for a personal licence.

Regulation 17 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 18 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 20 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 24 amends section 83 of the 2005 Act, which deals with the situation where a Licensing Board receives notice of a requirement to pay an immigration penalty and the procedure to be followed including enabling the Secretary of State to issue an immigration objection notice.

Part 5 of the Regulations adds a new section 138A to the 2005 Act to make provision for immigration officers to enter and inspect licensed premises for the purpose of determining whether an immigration offence is being committed in connection with the carrying on of activities in the premises. It also applies to other premises if food or drink is sold for consumption on the premises

or there is reason to believe that alcohol is being sold on the premises in breach of section 1(1) of the 2005 Act.

Part 6 of the Regulations 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.

Part 7 of the Regulations makes consequential amendments to sections 129, 134, 147 and 148 of the 2005 Act.

Part 8 of the Regulations makes transitional provision.