

**Home Office****Policy equality statement (PES)****Prevention of illegal working in licensed premises for the sale of alcohol and late night refreshment****Objectives:**

This policy seeks to prevent illegal working in premises licensed for the sale of alcohol and late night refreshment by introducing immigration safeguards into the existing licensing regime for this sector. The measures will prevent premises and personal licences being issued to an individual who, if resident in the UK, does not have permission to be in the UK or work in that sector and where to grant a licence would be prejudicial to the prevention of immigration crime and illegal working.

These measures are intended to ensure the proper functioning of the regulated sector of alcohol and late night refreshment, ensuring licensable activity of this type is carried out responsibly without risk of harm to the surrounding communities. The prevention of immigration crime is part of the licensing objective of preventing crime and disorder. Accordingly, these measures will contribute to promoting the protection of the public by ensuring that licence holders act responsibly and in accordance with UK law, and they will better prevent and deter illegal working in a sector that is at high risk. By way of illustration, of all civil penalties for illegal working served in the UK in the year to June 2015, 82 per cent were served on the retail, hotel restaurant and leisure industry sectors<sup>1</sup>. A large proportion of these businesses hold premises or personal alcohol licences, which is why safeguards are being introduced into the licensing regime for the sale of alcohol and late night refreshment.

**Measures:**

Section 36 of, and Schedule 4 to, the Immigration Act 2016 (the 2016 Act) amend the Licensing Act 2003 (the 2003 Act) and introduce immigration safeguards in respect of licensing applications. These measures are due to come into effect on 6 April 2017 in England and Wales. Similar provision will be made by regulations to the licensing regimes of Scotland and Northern Ireland and commence later in 2017.

The measures will provide for the following:

**1. Licences will not be granted to those without lawful immigration status or entitlement to work in the UK**

These measures provide that premises and personal licences to supply alcohol or provide late night refreshment cannot be issued to an individual who, if resident in the UK, does not have permission to be in the UK, or is not entitled to undertake work relating to the carrying on of a licensable activity; this could be because of an immigration condition prohibiting the individual from working or undertaking that type of work. All applications (by individuals irrespective of their nationality or the size of the business they represent) for these licences

<sup>1</sup> Civil Penalties and Compliance Team, Immigration Enforcement, 2015.

will be required to include documentary evidence of their lawful immigration status and entitlement to carry out work in a licensable activity, and checks will be performed on a non-discriminatory basis. An applicant for a personal licence is required to make a declaration of any previous convictions or penalties, including in relation to immigration.

## **2. Secretary of State to become a Responsible Authority in the existing Licensing regime**

The Secretary of State will be added to the list of existing Responsible Authorities in the Licensing Act 2003. These are public bodies that must be fully notified of applications and are entitled to make representations to the licensing authority in relation to the application for the grant, variation or review of a premises licence. There are nine others already, and they include the police and bodies responsible for health and safety, environmental health and trading standards. All applications for personal licences will require the applicant to demonstrate that they are eligible to carry out work in the licensable activity and they must declare any previous criminal offences, including immigration offences (including receipt of civil penalties). Where the applicant declares in their application for a personal licence a previous immigration offence or a comparable foreign offence, the relevant licensing authority will forward the application to the Home Office for further consideration. The Home Office will decide whether to make representations to the Licensing Authority.

Where it is necessary to prevent illegal working and immigration crime, the Secretary of State (Immigration Enforcement) will submit to the relevant Licensing Authority an objection to the grant of a licence, or request that conditions be applied to a premises licence. Immigration Enforcement may also request the review of an existing licence as a result of enforcement activity which identifies the commission of immigration offences or where the holder of a licence issued before 6 April 2017 no longer has immigration permission to work. In all cases, it is the Licensing Authority that makes the decision on the licence application or review, having considered any representations. There is a right of appeal against that decision. The measures do not change the existing process of licensing hearing and appeals.

## **3. Immigration Officer powers of entry**

Section 179 of the 2003 Act in relation to rights of entry to investigate licensable activities has been amended by the 2016 Act to align the power of entry of an immigration officer with that of a licensing enforcement officer. This will facilitate joint working operations of immigration officers with licensing enforcement officers, the police, and other bodies involved in the inspection of such premises. Where immigration officers suspect that a licensable activity is occurring on the premises, they may enter the premises to check for immigration offences in connection with these licensable activities. This power of entry will be used to investigate illegal working following receipt of intelligence.

## **4. Curtailment of a licence**

These measures will ensure that for those licence holders whose immigration status in the UK is time-limited, their licence issued on or after 6 April 2017 will lapse at the point that their immigration permission and their entitlement to carry out work in licensable activity come to an end.

**Summary of the evidence considered in demonstrating due regard to the Public Sector Equality Duty.**

## **Public sector equality duty**

The public sector equality duty under section 149 of the Equality Act 2010 requires public bodies to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by the Equality Act 2010;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The equality duty covers the following nine protected characteristics: age; disability; gender reassignment; pregnancy and maternity; race (including ethnic or national origins, colour or nationality); religion or belief; sex; and sexual orientation. However, in relation to the exercise of immigration and nationality functions, the duty to have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it does not apply to the protected characteristics of age, religion or belief and race (though only as far as ethnic or national origins or nationality are concerned).

From 6 April 2017, in England and Wales, all applications for licences to supply of alcohol or late night refreshment will include a declaration that the applicant has lawful immigration status and the right to work in the UK, and be accompanied by evidence to support this. These immigration checks will be a requirement for all applications and will not target any group on the grounds of a protected characteristic. An applicant may demonstrate their eligibility to work by including in their application a copy of a document from a list of documents, for example a current passport or biometric residence permit indicating lawful status in the UK and no conditions prohibiting them from working.

Application forms have been amended in regulations (The Licensing Act 2003 (Miscellaneous Amendments) Regulations 2017) to include a requirement to provide details of their date of birth, nationality and evidence of an entitlement to carry out work in the licensable activity within the application. The evidential requirements are broadly similar to existing right to work checks, which have been in place since 2006, and are set out in the application form. Immigration offences (including civil penalties and foreign offences comparable to immigration offences) are added to the 'relevant offences' within the existing licensing regime in the 2003 Act. All applicants must already declare relevant offences and to make a false declaration within an application for a licence is a criminal offence.

All premises and personal licence applications made by individuals on or after 6 April 2017 will require evidence of lawful immigration status and eligibility to work. This includes licence applicants from businesses of all sizes within the alcohol and late night refreshment sector. As a Responsible Authority, Home Office Immigration Enforcement will receive, for further assessment, the applications of all premises licences and the applications for personal licences on which there is a declaration of previous immigration offences. These cases

will be considered by Immigration Enforcement, and if it is considered necessary for the prevention of immigration crime and illegal working in the alcohol and late night refreshment sector, Immigration Enforcement will make representations to the relevant Licensing Authority on behalf of the Secretary of State. Decisions taken by Immigration Enforcement on whether to make representations will be made on a case by case basis and must be proportionate to the risk identified.

Where correctly applied, this policy will not lead to unlawful direct or indirect discrimination. Individuals will be excluded from obtaining a licence only as a result of not having a legal entitlement to carry out the employment in question as a result of their immigration status, and any relevant offences, and not as a result of unlawful discrimination.

The following assesses the potential impact on the protected characteristics covered by the Equality Act.

### Race

Race encompasses colour, nationality, and ethnic and national origins but it does not include immigration status. In the exercise of immigration and nationality functions there is an exemption from the part of the Public Sector Equality Duty which requires a public authority to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, so far as it relates to nationality and ethnic or national origins.

These measures do not directly discriminate on grounds of race. In terms of indirect discrimination, these measures may have a larger impact on particular nationalities due to patterns of migration into the UK, including the patterns of immigration offending, as well as higher representation of particular nationalities within this sector. However, the measures are a proportionate means of achieving the legitimate aim of preventing crime and promoting effective immigration control, and are justified on that basis.

This policy will only affect individuals who would either be committing an immigration offence by carrying out the licensable work, or who have previously committed immigration offences, such as employing illegal workers, which make them unsuitable for holding a licence in view of the licensing objective of preventing crime and disorder. It is already unlawful to employ an illegal worker under section 15 and 21 of the Immigration, Asylum and Nationality Act 2006. It is also already an offence to be an illegal worker, under section 24B of the Immigration Act 1971. In responding to applications for licences, the Secretary of State (Immigration Enforcement) will intervene only where individuals do not comply with UK immigration law. Decisions to intervene on licence applications will be made in consideration of the individual's compliance with the UK's immigration laws. It will never be on grounds of colour, nationality or ethnic or national origins.

Joint operations between licensing enforcement officers and immigration officers may be carried out under the existing licensing regime. With effect

from 6 April, immigration officers will have the same powers to enter premises as licensing enforcement officers and the police. The remit of the immigration officer is to see whether an offence under any of the Immigration Acts is being committed in connection with that licensable activity. This power will facilitate multi- agency operations in respect of licensed premises, and it will be used to investigate illegal working in relation to the licensable activity following receipt of intelligence.

The decision to inspect a premises in order to check for immigration offences will be taken as a result of intelligence and never on the grounds of colour, nationality or ethnic or national origins.

Other characteristics

No impact on any of the other protected characteristics has been identified.

<b>SCS sign off</b>	Tim Woodhouse	<b>Name/Title</b>	Deputy Director IMISE (IBPD)
<b>I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with Section 149 of the Equality Act and that due regard has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations.</b>			
<b>Directorate/Unit</b>	Immigration and Border Policy Directorate (IBPD)	<b>Lead contact</b>	Fiona Cameron
<b>Date</b>	30 March 2017	<b>Review Date</b>	

**Retain the completed PES for your records and send a copy to  
Diversity team@homeoffice.gsi.gov.uk and your relevant business area  
Equality and Diversity Lead.**