



Home Office

Preventing illegal working in licenced premises and the Home Office role as a responsible authority in England and Wales

Version 2.0

Immigration Returns, Enforcement and Detention general instructions.

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About this guidance

This guidance tells Immigration Enforcement officers about the prevention of illegal working in premises licensed for the sale of alcohol or late-night refreshment.

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the policy team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **2.0**
- published for Home Office staff on **17 August 2022**

Changes from last version of this guidance

New guidance.

Related content

[Contents](#)

Related external links

[Section 182 of the Licensing Act 2003 amended guidance](#)

Policy and legislation

Policy objective

To prevent illegal working in premises licensed for the sale of alcohol or late-night refreshment.

Legislation

[The Licensing Act 2003 \(the 2003 Act\)](#) sets out the licensing regime for England and Wales. Section 36 of and Schedule 4 to the [Immigration Act 2016 \(the 2016 Act\)](#) amend the 2003 Act and introduce some immigration safeguards in respect of licensing applications made in England or Wales on or after 6 April 2017, to provide that:

- premises and personal licences to supply alcohol or provide late night refreshment cannot be issued to an individual who does not have permission to be in the UK (if they are living here), or is not entitled to undertake work relating to the carrying on of a licensable activity
- licences issued to those with limited permission to be in the UK will lapse when their permission to be in the UK and/or work in a licensable activity comes to an end
- the Immigration Act 2016 made the Secretary of State a responsible authority in respect of premises licensed to sell alcohol or late-night refreshment with effect from 6 April 2017
- immigration officers are permitted to enter premises which they have reason to believe are being used to sell alcohol or provide late night refreshment, to investigate whether immigration offences are being committed in connection with the licensing activity

Section 36 enables similar provision to be made by regulations in the licensing regimes of Scotland and Northern Ireland.

Related content

[Contents](#)

Introduction to alcohol licensing

Who needs a licence?

Under the [Licensing Act 2003 \(the 2003 Act\)](#) businesses, organisations and individuals who want to carry out a licensable activity in England and Wales must have a licence issued by a licensing authority. This means that anyone selling alcohol to the public (retail sales) or late-night refreshment (hot food or hot drink between 11pm and 5am) must have a licence. The law and policy governing this area is the responsibility of the Home Office Alcohol and Late Night Refreshments team.

The types of licensed businesses that the Home Office (Immigration Enforcement (IE)) are likely to be interested in are off-licences, restaurants, late night takeaways and pubs/bars.

What are licensing objectives?

The legislation provides a clear focus on the promotion of 4 statutory objectives which must be addressed when licensing functions are undertaken. These licensing objectives are:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

The prevention of crime includes the prevention of immigration crime and the prevention of illegal working in licensed premises. Licensing authorities are expected to work with Immigration Compliance and Enforcement (ICE) teams, as well as the police, in respect of these matters.

Which types of licences are required?

The 2003 Act provides for 4 different types of authorisation or permission. This guidance is concerned with just the first 2: the premises licence and the personal licence:

- premises licence – authorises the premises to be used for licensable activities
- personal licence – authorises an individual to sell or authorise the sale of alcohol from premises in respect of which there is a premises licence
- club premises certificate – to allow a qualifying club to engage in qualifying club activities as set out in the 2003 Act (for example, a working men's club or a political club)
- temporary event notice – to carry out licensable activities at a temporary event

The provisions only apply to premises and personal licences, and not to other types of authorisation under the 2003 Act, for the following reasons:

- there is little evidence of immigration abuse in respect of clubs authorised under club premises certificates - where there is illegal working in clubs, the Home Office may serve a civil penalty and, if relevant, prosecute the employer for the offence of employing an illegal worker (closure notices and illegal working compliance orders, under section 38 and Schedule 6 of the 2016 Act, may also be used)
- it is deemed disproportionate to apply the requirements to a Temporary Event Notice (TEN) - TENs are a light touch licensing process which allow a person wishing to hold an event to give notice to the licensing authority that they intend to carry out licensable activities for a period of up to 7 days
- the provisions apply to all premises licences except those which only authorise regulated entertainment (for example, cinemas) - premises that provide regulated entertainment will often also sell alcohol (for example, live music venues), and such premises would fall under these provisions in respect of alcohol

What is a personal licence?

The sale of alcohol may not be made under a premises licence unless there is a designated premises supervisor (DPS) in respect of the premises, who must hold a personal licence. There is an exception for community premises, such as village halls, which have successfully applied to remove the DPS requirement.

The DPS will usually be the person who is responsible for day to day management of the premises and will act as the primary contact for the licensing authority, the police and ICE teams. While they need not be on site at all times, they are expected to be involved enough with the business to be able to act as its representative, and they must be contactable at all reasonable times.

If the police, licensing authority or ICE team have any questions or concerns about the business, they will expect to be able to reach the DPS.

Each premises may have only one DPS, but the same person may act as the DPS at more than one premises.

Personal licences relate to alcohol sales only. A DPS or personal licence is not required in order to provide late night refreshment.

Who can apply for a personal licence?

A personal licence is issued to an individual. The applicant:

- must be aged 18 or over
- if living in the UK, must have an immigration status which allows work in a licensable activity
- must possess a licensing qualification accredited by the Secretary of State (or one which is certified as if it is such a qualification or is considered equivalent)

or is a person as prescribed in the Licensing Act 2003 (Personal licences) Regulations 2005 - currently persons prescribed in regulations are:

- a member of the company of the Master, Wardens, Freeman and Commonalty of the Mystery of the Vintner's of the City of London
- a person operating under a licence granted by the University of Cambridge
- a person operating premises under a licence granted by the Board of the Green Cloth
- must not have forfeited a personal licence within 5 years of their application
- must have paid the appropriate fee to the licensing authority and must not have an unspent conviction for a relevant offence (relevant offences are set out in Schedule 4 of the Licensing Act 2003, and include offences relating to firearms, drugs, and violence, as well as immigration offences) or a foreign offence or a civil immigration penalty
- must not have received an objection on an application on crime prevention grounds from the police
- must not have received an objection from IE on the basis of prejudice to the prevention of illegal working or the licensing authority has considered an objection but determined that the grant of the application will not undermine the crime prevention objective or prevention of illegal working

A personal licence is either granted or rejected, and once it has been granted it lasts indefinitely (unless it becomes invalid due to immigration status or is revoked). There are no conditions added to a personal licence, and it cannot be granted for a limited period of time.

What is a premises licence?

A premises licence can authorise the use of any premises (which is defined in the Licensing Act 2003 as a vehicle, vessel or moveable structure or any place or a part of any premises) for licensable activities as defined in the 2003 Act. A premises licence may be granted with conditions attached.

Who can apply for a premises licence?

Any person (the person must be an individual aged 18 or over and, if living in the UK, must have an immigration status which allows work in a licensable activity), who is carrying on, or who proposes to carry on a business which involves the use of premises (any place including one in the open air) for licensable activities may apply for a premises licence, either on a permanent basis or for a time-limited period. The majority of licences are granted on a permanent basis. Those who live outside of the UK may hold a premises licence, but as they are outside the UK, they are not required to have the right to work here. They will be required to provide documents as part of their application to show this to be the case.

'A person' in this context includes, for example, a business or a partnership where there is joint or shared liability. Licensing authorities should not require the nomination of an individual to hold the licence or determine the identity of the most appropriate person to hold the licence.

What are licensable activities?

A premises licence authorises the use of any premises for licensable activities. Licensable activities are as follows:

- the sale by retail of alcohol
- the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club
- the provision of regulated entertainment
- the provision of late night refreshment

What is late night refreshment?

Schedule 2 of the 2003 Act defines late night refreshment as the supply to the public of 'hot food or hot drink' between 11pm and 5am. For example, take away food outlets and night cafés. Shops and supermarkets selling cold food and cold drink that is immediately consumable from 11pm are not licensable as providing late night refreshment.

The 2003 Act allows for certain exemptions, including hot drinks sold via vending machines, food sold in hotels to guests, on board vehicles, and food provided by charities (for example to homeless people).

Licensing authorities are able to exempt categories of late-night refreshment providers from the requirements of the 2003 Act, but before doing so must consider what the risks are in terms of the promotion of the licensing objectives and consult relevant partner agencies. In practice, these exemptions have not been used by any licensing authority since they were introduced in October 2015. For more information see: [Statutory guidance issued under section 182 of the Licensing Act 2003](#).

What are responsible authorities?

Responsible authorities are listed in the 2003 Act. These are public bodies that must be fully notified of applications and that are entitled to make representations to the licensing authority in relation to the application for the grant, variation or review of a premises licence. These representations must relate to one or more of the licensing objectives and be considered 'relevant' by the licensing authority.

The Secretary of State has been added to the list of responsible authorities in respect of premises licensed to sell alcohol or late-night refreshment. This includes receiving for consideration applications for premises licences, except applications to vary the DPS on a premises licence and regulated entertainment only licences. Other responsible authorities (which have a role in relation to all the licensable activities) include:

- the relevant licensing authority and any other licensing authority in whose area part of the premises is situated
- the chief officer of police

- the local fire and rescue authority
- the relevant enforcing authority under the [Health and Safety at Work etc. Act 1974](#)
- the local authority with responsibility for environmental health
- the local planning authority
- a body that represents those who are responsible for, or interested in, matters relating to the protection of children from harm
- each local authority's Director of Public Health (DPH) in England and Local Health Boards (in Wales)
- the local weights and measures authority (trading standards)

The Home Office (Immigration Enforcement) acting as a responsible authority

The [2016 Act](#) made the Home Secretary a responsible authority with effect from 6 April 2017 in respect of the sale of alcohol and late-night refreshment (The Secretary of State (Home Office IE) is not a responsible authority in respect of the supply of alcohol by clubs (members clubs which are licensed under club premises certificates, for example, political or sports clubs), or the provision of regulated entertainment). In effect this conveys the role of responsible authority on IE. When IE acts as a responsible authority it will do so under the prevention of crime and disorder licensing objective.

Applications to vary licences

In addition to applications for new personal and premises licences, existing licence holders may apply to vary or transfer a licence.

Variations of existing licences

Where a premises licence holder wishes to amend the licence, in most cases the 2003 Act permits an application to vary the licence to be made, rather than requiring an application for a new premises licence. The process to be followed will depend on the nature of the variation and its potential impact on the licensing objectives.

Variations include, for example, adding licensable activities, amending the times when alcohol may be sold, or changing the structure or layout of the premises. The variation process allows the licensing authority to consider the potential impact of the changes on the licensing objectives and put any appropriate conditions in place. In their application, the license must describe the nature of the proposed variation and any additional steps they will take to promote the licensing objectives. In the same way as for a premises licence application, if representations are made then the application will be considered at a hearing.

IE will not receive applications to vary the DPS on a premises licence. These applications are sent to the relevant licensing authority and the police only. Any applications to vary the DPS on a premises licence received by the Intervention and

Sanctions Directorate (ISD) Alcohol and Late Night Refreshment team (ALNR) may be destroyed.

Minor variations process

Variations to premises licences that would not be expected to impact adversely on the licensing objectives may be subject to a simplified 'minor variations' process. On receipt of such an application, the licensing authority will consider whether the variation could impact adversely on the licensing objectives. The licensing authority must consult those responsible authorities it considers appropriate (whether the application is made in writing or electronically) and take their views into account in reaching a decision. They may wish to consult IE if they have particular concerns about preventing immigration crime and illegal working in licensed premises, under the broader licensing objective of preventing crime and disorder.

There is no right to a hearing (as for a full variation or new application), but licensing authorities must take any representations into account in arriving at a decision. Minor variations will generally fall into 4 categories: minor changes to the structure or layout of premises; small adjustments to licensing hours; the removal of out of date, irrelevant or unenforceable conditions or addition of volunteered conditions; and the addition of certain licensable activities. In all cases the overall test is whether the proposed variation could impact adversely on any of the 4 licensing objectives.

Amending or removing existing conditions

There may be some circumstances when the minor variations process is appropriate. Premises may change over time and the circumstances that originally led to the condition being attached or volunteered may no longer apply. When the application is to remove an existing condition imposed to prevent illegal working in licensed premises, IE should normally be consulted as a responsible authority. In practice, this rarely happens as licence holders tend to simply leave the conditions on their licence even when they are no longer relevant.

Interim authority notices

The 2003 Act provides special arrangements for the continuation of permissions under a premises licence when the licence lapses because the holder of the licence dies suddenly, becomes bankrupt, mentally incapable or ceases to be entitled to work in the UK.

In such circumstances, an 'interim authority' notice may be given to the licensing authority to allow the business to continue operating in the immediate period. The notice must be given within 28 consecutive days beginning the day after the licence lapsed. The effect of giving the notice is to reinstate the premises licence as if the person giving the notice is the holder of the licence and thereby allow licensable activities to continue to take place pending a formal application for the transfer of the licence. The maximum period for which an interim authority notice may have effect is three months. An interim authority notice may only be given by a person with an interest in the premises as set out in the 2003 Act or by a person connected to the

former holder of the licence (normally a personal representative of the former holder; or a person with power of attorney; or where someone has become insolvent, that person's insolvency practitioner). The person giving the interim authority notice must be entitled to work in the UK in a licensable activity.

The interim authority notice ceases to have effect unless, by the end of the initial period of 28 consecutive days, a copy of the notice has been given to the chief officer of police and, except for regulated entertainment only licences, IE. In view of their short duration, IE are unlikely to have a significant interest in interim authority notices and will be more interested in the application to transfer the licence that will follow. Where applications are made in writing, the applicant must give notice of the application to the chief officer of police and IE. If an application is made electronically via GOV.UK or the licensing authority's electronic facility, the licensing authority must notify the police and IE no later than the first working day after the notice is given.

If satisfied that, in the exceptional circumstances of the case failure to cancel the interim authority would undermine the crime prevention objective, within 2 working days of receiving the copy the police may give a notice to that effect to the licensing authority. Similarly, and within the same time period, IE may give a notice to the licensing authority if satisfied that in the exceptional circumstances of the case, failure to cancel the interim authority notice would be prejudicial to the prevention of illegal working in licensed premises. In such circumstances, the licensing authority must hold a hearing to consider the objection notice and cancel the interim authority notice if it decides that it is appropriate to do so for the promotion of the crime prevention objective including the prevention of illegal working.

Transfers of premises licences

Any person who may apply for a premises licence, which includes a business, may apply for a premises licence to be transferred to them. Where the application is made in writing, the applicant must give notice of the application to the police and IE. Where it is made electronically, the licensing authority must notify the police and IE no later than the first working day after the application is made.

In the vast majority of cases, it is expected that a transfer will be a very simple administrative process. The transfer can come into immediate interim effect as soon as the licensing authority receives it, until it is formally determined or withdrawn. This is to ensure that there should be no interruption to normal business at the premises. If the police and IE raise no objection about the application, the licensing authority must transfer the licence in accordance with the application.

IE may object if it considers that granting the transfer would be prejudicial to the prevention of illegal working in licensed premises. Such objections are expected to be rare and arise because the police or IE have evidence that the business or individuals seeking to hold the licence or business, or individuals linked to such persons are involved in immigration crime or employing illegal workers.

Related content

[Contents](#)

Overview of licensing applications

How are applications made?

Applications are currently made either online or by post. Online application forms are available on GOV.UK or through the relevant licensing authority. Application forms are prescribed in regulations; this means that applicants must use the prescribed forms so that applications are in a standard format.

Relevant licensing authority

Premises licences are issued by the licensing authority for the area in which the premises are situated. Applicants for personal licences who are resident in a licensing authority's area are required to make the application to that licensing authority. Once a personal licence is issued it may be used anywhere in England or Wales (for example, if the licence holder moves address, they do not need to reapply).

Requirement to copy applications to responsible authorities

The licensing authority must copy electronic applications, made via GOV.UK or its own facility, to responsible authorities no later than the first working day after the application is given. However, if an applicant submits any part of their application in writing, the applicant will remain responsible for copying it to responsible authorities. Applicants are required to declare on their application that they will send it to all responsible authorities. Not to do so would equate to making a false declaration and would, therefore, be a criminal offence.

Amended application forms

Relevant application forms have been amended, with effect from 6 April 2017, to include a warning that it is a criminal offence to work illegally in the UK. The forms also include new questions about the applicant's date of birth, nationality, and their residential address. Evidence of the applicant's entitlement to work in the UK should also accompany their application. Further amendments have been made to the application forms, with effect from 1 July 2021, to include guidance for applicants on how to demonstrate their entitlement to work, either online using the Home Office right to work checking service or by providing a copy of one or more acceptable documents. The documents which demonstrate entitlement to work in the UK are the same for personal and premises licence applications, and broadly the same as those for the existing requirements for the taxi and private hire vehicle licensing regime. They are based on existing acceptable document lists for checks undertaken by employers.

Acceptable documents for right to work checks are set out in: [Immigration](#)

[\(Restrictions on Employment and Residential Accommodation\) \(Prescribed Requirements and Codes of Practice\) and Licensing Act 2003 \(Personal Premises and License\) \(Forms\) Order 2021.](#)

What is necessary for an application to be valid?

For an application for a premises licence or a personal licence to be lawful and valid it must be made by someone who is over the age of 18 and, if they live in the UK, they must be entitled to work in the UK in a licensable activity.

Entitlement to work

For the purposes of these provisions, an individual is entitled to work in the UK if:

- they do not require leave to enter or remain in the UK under the [Immigration Act 1971](#)
- they have been granted such leave and the leave:
 - is not invalid
 - has not ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise)
 - is not subject to a condition preventing them from doing work relating to the carrying on of a licensable activity

A licensing authority must not issue a premises or personal licence to someone who is not entitled to work in a licensable activity. An application made by someone who is disqualified by reason of their immigration status is invalid and must be rejected.

Immigration information as part of the application

For applications made by individuals on or after the 6 April 2017, where the applicant is an individual, including a partnership where there is joint and several liability between the individual partners, the applicant is asked to provide their date of birth, their nationality, and their residential address, and to demonstrate their right to work in the UK.

The application form has been amended to include guidance for individuals on how to prove their right to work, either online by using the Home Office right to work checking service or by providing one of more copies of acceptable documents that are based on existing prescribed documents for checks undertaken by employers. This list is set out at [Annex E - Documents to demonstrate a right to work](#). The form also includes a clear warning about the requirement to be entitled to work in the UK in a licensable activity in order to make a valid licence application.

Under section 158 of the [2003 Act](#), it is a criminal offence to provide false information as part of the licence application, punishable on summary conviction by a fine of an unlimited amount.

Assessment of entitlement to work

In most cases the licensing authority should be able to make an assessment that the applicant is not disqualified from applying for a premises or personal licence based on the information provided with the application, including the copy documents supplied. This will include all cases where the applicant is a British citizen.

Applicants are not required to provide original documents, and licensing authorities should not request original documents. Clear photocopies (black and white or in colour) and scanned copies of documents are sufficient. The reason for this is that, in making amendments to the 2003 Act to prevent illegal working, the intention has been to work with the grain of existing licensing processes. These processes allow online applications without the original document having to be sent.

Where the applicant lives in the UK, the licensing authority must be satisfied that the applicant has lawful immigration status, and that they are not prohibited from holding a licence because they are in the UK illegally, or because they are in the UK legally but are subject to a condition that prevents them from working in a licensable activity.

Licensing authorities must conduct checks of entitlement to work on all individuals who apply for a premises licence, including partnerships where there is joint and several liability among the individual partners. This will normally be done by making an assessment of their eligibility from the documents provided within their application, or, in the exceptional circumstances stated below, by contacting the Home Office's Status, Verification, Enquiries and Checking (SVEC) Unit.

For the majority of applications, licensing authorities will ascertain from the information within an application (including the accompanying documents or output from the online service) whether or not an individual is disqualified from holding a licence as a result of their immigration status. This includes all applications from British citizens. In the following circumstances, an immigration status check may be made by the licensing authority contacting SVEC to verify that someone has the right to hold a premises or personal licence:

- the applicant has not provided any acceptable documents because they have a previously outstanding application for permission to stay in the UK with the Home Office
- the applicant has not provided any acceptable documents because they have an appeal or administrative review pending against a Home Office decision that grants them a right to work and, therefore, cannot provide evidence of their right to work
- the applicant has not provided any acceptable documents, but they present other information indicating they are a long-term resident who arrived in the UK before 1988
- the applicant has an outstanding EU Settlement Scheme (EUSS) application submitted by 30 June 2021. Since 1 July 2021, European Economic Area (EEA) citizens with an outstanding online application to the EUSS made up to and including 30 June 2021 will be issued a digital Certificate of Application (CoA):

- this enables the individual to use the online right to work service to evidence their right to work - in the first instance, you should check with the individual to see if they can provide you with a share code
- this will mean that you can check their right to work immediately rather than having to contact SVEC
- the online service will provide confirmation of their right to work and advise when a follow-up check is required - due to the postage and processing time related to paper applications and ID verification, you may be required to undertake a check before they receive their Certificate of Application: the individual will, however, have received a letter or email notification acknowledging receipt of the application, which you should request, you can then request a check from SVEC
- if a licensing authority identifies an EEA citizen licence holder who has not applied to the EUSS by 30 June and has no alternative immigration status in the UK

Licensing authorities are not required to carry out immigration checks on the following:

- the designated premises supervisor (DPS) named on an application for a premises licence
- applications to vary the DPS on a premises licence
- applications from those who do not live in the UK (where this is clear from the information in the application form (residential address) and in supporting documentation)
- applications from those applying for a premises licence as a limited company, limited liability partnership, or anyone applying pursuant to a function or on behalf of an organisation listed in section 16(1)(b)-(h) of the 2003 Act

ICE teams should not provide licensing authorities with routine status checks. If approached by a licensing authority for a status check or related query, they should refer them to their Local Partnership Manager.

If an applicant has restrictions on the length of time they may work in the UK, a premises licence or personal licence may still be issued. A licence issued in respect of an application made on or after 6 April 2017 will cease to have effect when the right to work ends.

The new licence application forms make it clear that it is an offence to work illegally in the UK, or to employ individuals who do not have an entitlement to work. It also makes clear that an individual will not be issued with a licence if they are not entitled to live and work in the UK or are subject to a condition preventing them from carrying on a licensable activity. Furthermore, a licence in respect of an application made on or after 6 April 2017 will become invalid if the individual to whom it has been granted ceases to be entitled to live and work in the UK.

General principles: determining an application

If an application for a premises licence has been made lawfully and there have been no representations from responsible authorities or other persons, the licensing

authority must grant the application, subject only to conditions that are consistent with the operating schedule and relevant mandatory conditions.

The operating schedule sets out the details of how the business will operate such as the licensing hours, the licensable activities that are authorised, and the steps the business will take to manage any risks to the licensing objectives (for example, installing CCTV or employing door staff at certain times to prevent crime and disorder).

General principles: licence conditions

Conditions on a premises licence are important in setting the parameters within which premises can lawfully operate. Licence conditions are decided by the licensing authority, but may be proposed by the licensing authority, the applicant and responsible authorities (where appropriate). When requesting conditions to be added to a licence, Immigration Enforcement (IE) must adhere to the following principles (these are set out in the statutory guidance issued under section 182 of the [2003 Act](#)). The use of wording such as 'must', 'shall' and 'will' is encouraged. Licence conditions:

- must be appropriate for the promotion of the licensing objectives
- must be precise and enforceable
- must be unambiguous and clear in what they intend to achieve
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation
- must be tailored to the individual type, location and characteristics of the premises and events concerned
- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case
- should not replicate offences set out in the 2003 Act or other legislation.
- should be proportionate, justifiable and be capable of being met
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave
- should be written in a prescriptive format

Conditions should only be requested to be added to a licence if it is justified, in that it is appropriate to the prevention of immigration crime or the prevention of illegal working in licensed premises. Conditions are requested by making a representation, and this process triggers a hearing to consider the application (unless all parties come to an agreement about the conditions and agree that a hearing is not necessary).

Conditions cannot be attached to a personal licence. It is either granted or refused.

Licence conditions to prevent illegal working

These are likely to be one or more of the following, but not limited to this list:

- the employer must carry out checks relating to the right to work of their employees at [insert address of premises] and any prospective employees before entering into a contract of employment
- any copies of documents retained by the employer as a result of conducting checks relating to the right to work must be stored securely by the employer at the premises or a digital copy be immediately accessible from the premises for ease of inspection by immigration officials
- the employer, or any person appearing to represent the employer, must be able to produce on demand documents relating to the right to work, at the request of an immigration officer who enters the premises to carry out an inspection under section 179 (1A) of the 2003 Act

Each application on its own merits

Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy (see the guidance issued under [section 182 of the 2003 Act](#)). Conditions attached to licences must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.

Where representations are made

There is no requirement for responsible authorities to respond to any application. If no representations are made, the licensing authority will grant the licence in accordance with the application (the term 'representations' is used generically to refer to a response by a responsible authority to a licence application. Where this response is to a personal licence application, the term 'objection' is always used). It is common for licence applications not to receive representations. A 'nil response' is not required where there are no concerns about an application.

Timescales for responding

Responsible authorities must submit representations (for premises licences) or a notice (transfer application/interim authority notice) or an immigration objection notice (for a personal licence) in the following timescales:

Premises licence applications: At any time during a period of 28 consecutive days starting on the day after the day on which the application to which it relates was given to the authority by the applicant.

Applications to transfer a premises licence: 14 calendar days beginning on the day on which IE is notified of the application.

Application for an interim authority notice: Before the end of the second working day following receipt of the interim authority notice by IE.

Personal licence: 14 days beginning on the day IE received the notice.

Application to vary a licence: 28 consecutive days starting on the day after the day on which the application to which it relates was given to the licensing authority by the applicant.

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Immigration Enforcement as a responsible authority

Which applications will the Home Office (Immigration Enforcement) receive?

In common with other responsible authorities, Immigration Enforcement (IE) will receive notification of the following:

- Premises licences for the sale of alcohol or late-night refreshment:
 - all applications for premises licences for the sale of alcohol and/or late-night refreshment
 - all applications to transfer the above (Home Office (IE) may object exceptionally where there is evidence that the business or individuals seeking to hold the licence, or businesses or individuals linked to such persons, are involved in crime (or disorder) or employing illegal workers)
 - all applications to vary a premises licence, except to vary the designated premises supervisor (DPS), see [section 37 of the Licensing Act 2003](#), - applications must be sent to the licensing authority and police only – (applications to vary a DPS include a declaration that the proposed DPS is eligible to work in the UK, it is the employer's responsibility to ensure that the DPS is entitled to work and is not subject to conditions preventing him or her from doing work relating to a licensable activity, and to check any prescribed documentation)
 - applications for minor variations considered by the licensing authority to require consultation with IE (for example, removal or alteration of a relevant condition on a premises licence)
 - all interim authority notices
 - requests from other responsible authorities to review an existing licence
- Personal licences for the sale of alcohol:
 - all personal licence applications which include a declaration of an unspent conviction for a relevant offence; an unspent conviction for a foreign offence which the licensing authority considers to be comparable to an immigration offence, or where the applicant has been required to pay an immigration penalty

Personal licences and criminal records

In order to substantiate whether or not an applicant has a conviction for an unspent relevant offence, an application for the grant of a personal licence must include a criminal conviction certificate, a criminal record certificate generally in the form of a DBS check or the results of a subject access search of the Police National Computer by the National Identification Service to the licensing authority.

The requirement for an individual to establish whether or not they have unspent convictions for a relevant offence or foreign offence applies whether or not the individual has been living for a length of time in a foreign jurisdiction. All applicants

are also required to make a clear statement as to whether or not they have been convicted of a relevant offence or an equivalent foreign offence outside of England and Wales (under section 1(5)(8) of the Licensing Act 2003). This applies both to applicants who are resident in England and Wales and any person from a foreign jurisdiction. It is an offence to make a false declaration in an application.

Licensing authorities are required to notify the police when an applicant is found to have an unspent conviction for a relevant offence defined in the 2003 Act, or for a foreign offence. They are required to notify the Home Office where these are immigration offences or where the applicant has been required to pay an immigration civil penalty. If no offences or penalties exist, the licensing authority will grant the licence in the case of a valid application.

Civil penalties received for immigration matters are treated in the same way as relevant offences. Licensing authorities are required to notify IE when an applicant declares that they have been issued with a civil penalty which has not been cancelled following an objection or appeal, or convicted of an immigration offence, or a foreign offence comparable to an immigration offence. IE may object to an application on the grounds that granting the personal licence would be prejudicial to the prevention of illegal working in licensed premises.

Where an applicant has an unspent conviction for a relevant or foreign offence or an unpaid civil penalty, and the police or IE object to the application on crime prevention grounds, the applicant is entitled to a hearing before the licensing authority. If the police and IE do not issue an objection notice and the application otherwise meets the requirements of the 2003 Act, the licensing authority must grant the licence.

A number of relevant offences never become spent. However, where an applicant is able to demonstrate that the offence in question took place so long ago and that the applicant no longer has a propensity to reoffend, in spite of representations made by IE, a licensing authority may consider that it is appropriate to grant the application on the basis that doing so would not undermine any of the licensing objectives.

Immigration objection notice to a personal licence application

In the event that IE makes representations in a licensing application, this will be on the basis that they consider that to grant the licence will be prejudicial to the prevention of illegal working. See: [Overview of licensing applications](#).

If either IE or the police makes an objection, this in itself triggers a licensing hearing.

Licensing hearing

If representations about a premises licence are made by a responsible authority or other person, it is for the licensing authority to decide whether those representations are relevant to the licensing objectives and that they are not frivolous or vexatious. If the licensing authority decides that any representations are relevant, then it must hold a hearing to consider them. All cases regarding an existing licence must go to a

hearing, for example where IE requests the review of an existing licence, or where it makes representations on an application to vary an existing licence. However, a hearing in connection with an application for a new premises licence application can be avoided if the applicant agrees to conditions being added to their premises licence and all parties agree that a hearing is not necessary (including all those who made representations). In these cases, Intervention and Sanctions Directorate (ISD) Alcohol and Late Night Refreshment team (ALNR) will make contact with the licence applicant and work with the licensing authority to agree conditions and prevent a hearing. The majority of decisions regarding applications for new premises licences are made, in discussion with the applicant, without going to a hearing.

Where IE makes representations, the licensing authority should notify them of the outcome of the decision.

Licensing authorities, alongside IE in some cases, will try to conclude any discussions with the applicant in good time before the hearing. If the application is amended at the last moment, the licensing committee should consider giving other persons time to address the revised application before the hearing commences.

Immigration Compliance and Enforcement (ICE) teams will assist a licensing authority in respect of applications in which it has made representations, including participation in a hearing if this is required. The ISD ALNR team will be the point of contact for licensing authorities at any point before a hearing. At a hearing, IE will usually be represented by a member of an ICE team. Their attendance will be decided on a case by case basis, and the licensing authority will be informed in advance. The licensing authority should notify IE of the outcome of applications in which it has submitted representations. At the hearing, the ICE team will provide information regarding previous enforcement visits to the premises, details of any immigration arrests, civil penalties, cash seizure and Immigration Act criminal arrests.

There is no requirement in the 2003 Act for responsible authorities that have made representations to attend the hearing. However, it is generally good practice, assists committees in reaching more informed decisions, and ensures that sufficient weight is given to evidence submitted by IE as officers can give evidence orally. Where several responsible authorities within a local authority have made representations on an application, a single local authority officer may represent them at the hearing if the responsible authorities and the licensing authority agree. This local authority officer representing other responsible authorities may be a licensing officer and will have no role in the licensing determination process. This is to ensure that the responsible authorities are represented by an independent officer separate from the licensing determination process.

The precise make-up of a licensing hearing will be a decision of the individual licensing authority. It will generally comprise a chair and members of the licensing authority sub-committee (who are councillors), a solicitor who is an officer to the sub-committee, licensing officers to provide a secretariat to the sub-committee, responsible authority representatives (such as the police and environmental health), the applicant and their solicitor. The hearing is also open to the public.

As a matter of practice, the hearing will focus on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation. For example, IE may make representations on the grounds that the applicant has received previous civil penalties. At the hearing the officer may provide more detail about those penalties and any other evidence appropriate to the licensing objective, which has been included in the representations, and which is appropriate for public disclosure. Routine hearings will not require IE to be represented by solicitors. In exceptional circumstances, if an ICE team feel that representation by a solicitor is required, for example, due to the complex nature of the case, then contact must be made with the ISD ALNR team to discuss contact with Home Office legal advisers.

Additional representations that do not amount to an amplification of the original representation may not be made at the hearing. If IE wish to include further evidence in representations presented at a hearing, they should contact the licensing authority, who, in very exceptional circumstances may decide that it is necessary to adjourn the hearing to a specified date in order that further evidence may be submitted in written representations and considered at the hearing. In seeking an adjournment to raise such additional evidence, IE will be expected to explain why this additional evidence was not available when original representations were made. An adjournment must not be requested simply because the Home Office made a mistake, or the evidence was previously available but was overlooked.

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives
- the representations (including supporting information) presented by all the parties
- the statutory guidance issued under section 182 of the Licensing Act 2003
- its own statement of licensing policy

The licensing authority should give its decision within 5 working days of the conclusion of the hearing (or immediately in certain specified cases) and provide reasons to support it. This will be important if there is an appeal by any of the parties.

Notification of a decision must be accompanied by information on the right of a party to appeal. After considering all the relevant issues, the licensing authority may grant the application subject to conditions which must be appropriate for the promotion of the licensing objectives, which may include the prevention of illegal working and immigration crime in licensed premises.

Alternatively, the licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives, which may include the prevention of immigration crime and illegal working in licensed premises. It may also refuse to specify a designated premises supervisor and/or only allow certain

requested licensable activities. In the interests of transparency, the licensing authority will publish hearings procedures in full on its website to ensure that those involved have the most current information.

In summary, at a hearing, the licensing authority may:

- grant the application as made
- grant the application subject to modifying conditions that are consistent with the operating schedule in a way it considers appropriate for the promotion of the licensing objectives
- reject one or more requested licensable activities
- reject the application
- refuse to specify a person as a designated premises supervisor

Appeals

All decisions of the licensing authority, and any conditions imposed, must be appropriate for the promotion of the licensing objectives. There is a right of appeal to a magistrates' court against a licensing authority's decision.

In any appeal, a magistrates' court is not permitted to consider any question as to whether an individual should be or should have been granted leave to enter or remain in the UK; or an individual has, after the date of the decision being appealed against, been granted leave to enter or remain in the UK. In the case of the latter, it is open to the individual to make a further licence application.

If a premises licence application is refused, or granted subject to conditions, the applicant will be entitled to appeal against the decision of the licensing authority. Similarly, if a personal licence application is granted despite an objection from either the police or IE, both the police and IE are entitled to appeal against the licensing authority's determination. The ISD ALNR team will decide on the relevance and necessity for an appeal on a case-by-case basis. Licensing authorities are expected to record in full the reasons for any decision which they make.

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Factors for consideration: representations in premises licence applications

Immigration Enforcement (IE) should consider making a representation only where it is considered that to grant a licence would be prejudicial to the prevention of immigration crime in licensed premises. Each application must be considered on its individual merits.

Representations must be given within the timescales stipulated in [Overview of licensing applications](#), which vary according to the type of application. Nil responses are not required. In the event that no representations are received, a licensing authority will proceed to grant a licence in the case of a valid application which otherwise meets the criteria.

Representations should be made using the template at [Annex B - Immigration representation in respect of a premises licence](#).

The 2 key questions to ask are:

1. Would granting the premises licence be prejudicial to the prevention of illegal working and immigration crime?
2. If yes, can this be mitigated sufficiently by attaching conditions to the licence?

If yes – make representations to request the attachment of immigration conditions to the licence.

If no – make representations to object to the grant of the licence.

Stage 1: Triage: minimum thresholds

The following factors should always trigger an assessment of whether it would be appropriate to make a representation.

The applicant:

- has been convicted of an offence of employing an illegal worker under section 21 of the [Immigration, Asylum and Nationality Act 2006 \(the 2006 Act\)](#)
- has been required to pay an immigration penalty, in particular, penalty under section 15 of the 2006 Act during the last 3 years ending on the date of the licence application; or has, at any time, been required to pay such a penalty and failed to pay it (the objection and appeal processes and any timescale for paying it must have been concluded, and the penalty still payable)
- has, at any time, been convicted of an offence under any of the Immigration Acts

Where none of these is identified, no further action is required.

Where one or more of these issues is identified, consideration should move to stage 2.

Stage 2: more detailed consideration of the licence application.

In relation to a conviction under the 2006 Act:

Consider if the conviction is spent, as of the date of the licence application.

If so, this is unlikely to be considered sufficient to issue a representation to the licensing authority. IE should make their representation where the conviction is unspent and the caseworker believes that granting the licence would give rise to a serious risk of illegal working in licensed premises.

Where the conviction is spent and/or the risk of illegal working is deemed less serious, the caseworker will consider requesting licensing conditions.

In relation to the penalty:

Consider the number of separate penalty notices issued, with greater weight given to those issued in the last 3 years, and the number of illegal workers identified in those notices. In respect of premises that employ large numbers of workers, consider the proportion of all those workers who were illegally employed in order to consider whether an intervention would be a proportionate response. If, for example, there is only one documented incident of illegal working, consider the size of the penalty amount – as this is an indicator of the scale of illegal working in the premises.

IE should take into consideration when, during the last 3 years, a business/applicant has been required to pay one or more penalties under section 15 of the 2006 Act. If so, IE should then consider the amount of separate penalties, the total amount payable, the number of illegal workers identified within the business, and any repeat non-compliance. Where these factors indicate a high proportion of illegal working and/or repeat non-compliance, thereby presenting a serious risk of illegal working in licensed premises, IE should object to the grant of the licence.

Where the risk of illegal working is deemed less serious, the caseworker will consider requesting licensing conditions.

It is important to note, that the premises licence application refers to a specific premises. It is, therefore, important that the representation is focussed on the prevention of crime or prevention of illegal working in that premises.

However, the caseworker can consider if there is evidence that a business has shown wilful or systematic disregard for the law in respect of the employment of illegal workers at any other premises as this will be relevant to the assessment of risk. This should be taken into account in considering the application for a new

premises licence. This could include where the business had no evidence of processes in place for conducting right to work checks on any of its workers.

Consider any evidence that a company is generally compliant and has received penalties in other locations, perhaps by virtue of the size of its workforce, and there is evidence that the company has sought to address deficiencies that led to the employment of illegal workers. Such evidence is likely to mitigate against making representations to the grant of a licence. It may be appropriate for the caseworker to consider requesting licensing conditions.

In relation to an unpaid penalty:

Consider whether a penalty has been issued at any time and remains unpaid following the completion of the objection and appeal processes. This includes where no payment has been made or where there exists an agreement to pay by instalments, which has not been adhered to. The caseworker will usually object to the issue of the licence to prevent illegal working in the licensed premises, except where to do so would be disproportionate.

Where there is evidence that a business has dissolved and recommenced trading as a different legal entity in order to avoid consequences of unlawful activity (also called 'phoenixism'), this should be provided in the representations to the licensing authority. This is relevant where a business ceases to trade at a time that it has outstanding civil penalties and then re-establishes as a different legal entity. It will be necessary to establish a clear connection between the 2 businesses in order to produce this in evidence.

Payment of an outstanding penalty may not be requested as a licence condition; however, it may be raised in representations, and payment could be pursued in discussion with the applicant during the process of considering the licence application.

In relation to convictions under any Immigration Acts:

Consider what was the offence and the punishment, whether the conviction is spent, and if it is proportional to make representations on the basis that granting the application is likely to be prejudicial to the prevention of immigration crime and illegal working (see: In relation to a conviction under the 2006 Act)).

Considering whether to request conditions be attached to a licence

Conditions on a premises licence are important in setting the parameters within which premises can lawfully operate. See below for a further explanation.

It is important to ensure regard is given to the principles of the licensing conditions. These include the need for a condition to be appropriate for the promotion of the licensing objectives – which include the prevention of crime and disorder, including immigration crime and preventing illegal working in licensed premises.

A condition should not be standardised. It may be unlawful when it cannot be demonstrated that it is appropriate for the promotion of the licensing objectives in an individual case. A condition must not replicate what is already required in law.

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Factors for consideration: objection to a personal licence application

Immigration Enforcement (IE) can only make an immigration objection where it is considered that to grant a licence will adversely impact on the aim of the prevention of illegal working. Each application must be considered on its individual merits.

The immigration objection must be given within the timescales stipulated in [Overview of licensing applications](#). Nil responses are not required. In the event that no objections are received, a licensing authority will proceed to grant a licence in the case of a valid application.

IE will receive only those applications in which the licensing authority is aware that the applicant has an unspent conviction for an immigration offence or a foreign offence which the licensing authority considers to be comparable to an immigration penalty, or has been required to pay an immigration penalty.

Conditions cannot be attached to a personal licence. The licence is either granted or refused. Other than this, IE will apply the same consideration to the application as in [Factors for consideration: representations in premises licence applications](#).

In relation to a conviction for an immigration offence:

IE should object when there is an unspent conviction for an immigration offence and the caseworker believes that the nature, seriousness and/or timing of the offence is such that granting the licence would give rise to a serious risk of illegal working in licensed premises.

In relation to a penalty:

IE should object when the applicant has been issued with an immigration penalty and the caseworker considers that the amount of the penalty and/or the number of separate penalty notices issued, and the number of illegal workers identified in those notices indicates a high proportion of illegal workers within the business and so granting a licence would give rise to a serious risk of illegal working in a licensed premises.

In relation to an unpaid penalty:

IE should object when the applicant has been issued with an immigration civil penalty and has not paid or is not making regular payments or they have been served with a second or further penalty and the caseworker believes that objecting to the licence is a proportionate response and will prevent illegal working in licensed premises.

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Process for handling notification of licence applications

Point of receipt and contact details

Immigration Enforcement (IE) has a central team to handle the receipt of licence applications. This team maintains a record of applications received and considers whether to make an objection or representation. With relevant cases, they complete and refer the objection or representation template to the licensing authority and co-ordinate any actions required by IE to bring an application to a conclusion.

Postal licence applications, with accompanying document copies, should be copied by the applicant to IE as a responsible authority. The central address is provided on the relevant licensing authority's website, and also on GOV.UK.

Postal address:

Alcohol Licensing Team (ALNR)
Lunar House
40 Wellesley Road
Croydon
CR9 2BY

Email licence applications, with accompanying document copies, will be forwarded to IE as a responsible authority by the licensing authority.

Email: Alcohol and Late Night Refreshments (ALNR) team

Casework system

A bespoke casework system (database) has been developed for the ALNR team. This system enables the team to create a record of applications received, checks completed, actions undertaken and the case outcome. The system helps to identify when deadlines are approaching and when outcomes have not been recorded. It also facilitates referrals to the licensing authorities and other IE teams by providing the ability to input and update reference data held on the system, for example, a list of licensing authorities.

As there is no other Home Office system available which will allow the creation of a licence application record when an existing immigration record is not held, the ALNR's casework system is the sole source of data.

Quick reference guide

This guide describes the actions that are undertaken by the ALNR team when a personal or premises licence application is received. More detailed guidance for the

ALNR team has been provided in their training material and in a series of process maps.

The steps the ALNR team follow on receipt of an application are outlined below and in the accompanying flowchart:

Step 1

Record details of the application on the casework system, prioritising the need for action in line with the **deadline** date.

Step 2

Check the relevant Home Office data sources, for example Case Information Database (CID), Atlas and/or ENTITY, Civil Penalties database and Pronto. Have any of the **minimum threshold** factors been identified?

If no – enter outcome on the casework system and destroy the copy of the application.

If yes – refer to EO through casework system.

Step 3

Check the available information and **consider** the agreed thresholds. Is it appropriate to submit an objection or representation?

If no – enter outcome on the casework system and destroy copy of the application.

If yes – move to Step 4.

Step 4

Discuss proposals with the licensing authority (and if necessary, the applicant). Is it still considered appropriate to submit an objection or representation?

If no - enter outcome on the casework system and destroy copy of the application.

If yes – move to Step 5.

Step 5

Complete the relevant **template** and forward it to licensing authority. Notify relevant Immigration Compliance and Enforcement (ICE) team of potential need to attend **hearing** by sending details of objection or representation and reasons.

Await response from licensing authority.

Step 6

Response received from licensing authority. Will case go to hearing?

If no – enter outcome on the casework system and file copy of the application.

If yes – notify relevant ICE team of hearing date (the ICE team will consider the necessity and capacity to attend the hearing and take appropriate action).

Await outcome of hearing.

Step 7

Hearing outcome received. If the outcome is not favourable, are there grounds to **appeal**?

If no – enter outcome on the casework system and file copy of the application.

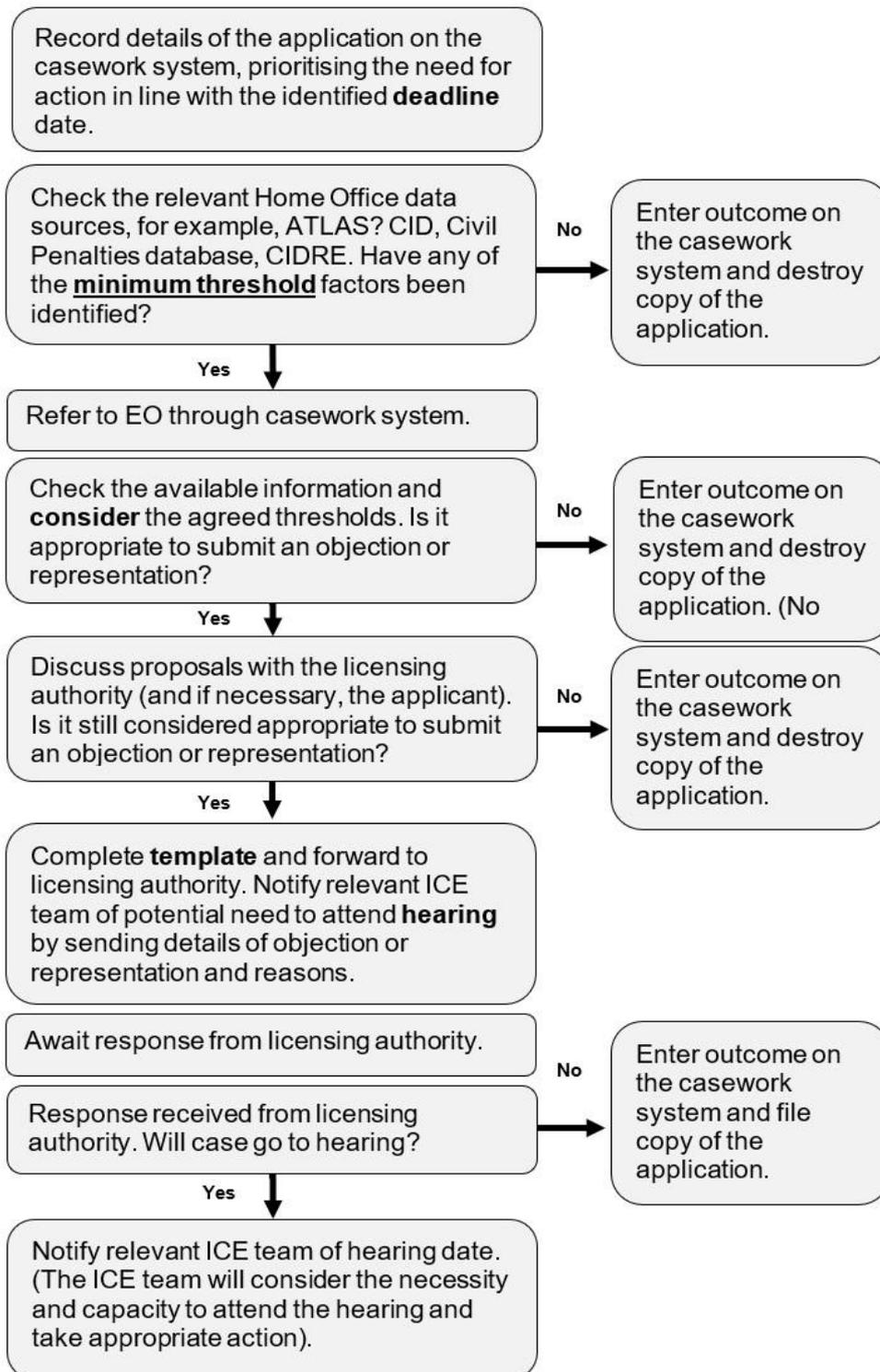
If yes – refer to relevant team to prepare and submit appeal papers and attend appeal hearing.

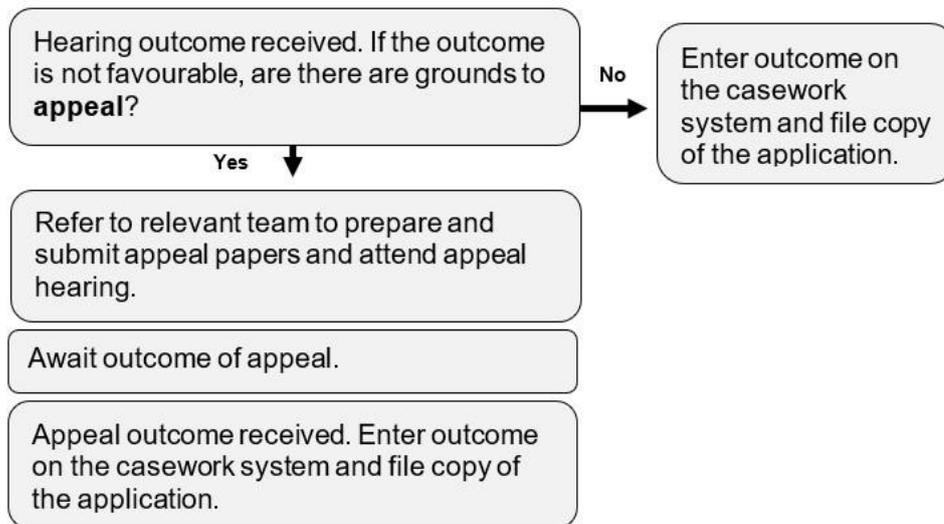
Await outcome of appeal.

Step 8

Appeal outcome received. Enter outcome on the casework system and file copy of the application.

Quick reference guide flowchart: part 1 – when applications are received from a licensing authority





Quality assurance

To provide assurance of consistent application of the legislation and procedural guidance, the ALNR team undertake a robust checking regime. The regime is:

- EOs will maintain a 10% check of work
- HEO will quality check 100% of premise licence review applications, including evidence submitted by ICE to ensure that they are applying the legislation and related guidance in an appropriate and consistent manner
- the SEO will dip sample 10% of cases referred to the EO - the percentage of cases checked will be reviewed and adjusted in accordance with the check findings

Additionally, where appropriate, the ALNR team can seek advice and guidance from policy.

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Requesting a review of a licence

Summary of a licence review

An application for a review of a premises or personal licence must be relevant to the promotion of one or more of the **licensing objectives** which, under the prevention of crime and disorder, includes the prevention of immigration crime and illegal working.

Immigration Enforcement (IE) may, therefore, request that an existing premises licence (except regulated entertainment only licences) be reviewed by the relevant licensing authority if there are concerns relating to immigration crime and illegal working in licensed premises. This also applies to licences issued before the [Immigration Act 2016](#) came into force. Such a request is likely to follow an enforcement visit, data sharing with HM Revenue and Customs or the grant of a **compliance order** by a court (for which special arrangements apply). Following an Immigration Compliance and Enforcement (ICE) team enforcement visit, they will refer the case to the Intervention and Sanctions Directorate (ISD) Alcohol and Late Night Refreshment team (ALNR) team as appropriate, based on the ICE team's assessment of the criteria set out below.

In the case of premises licences, the immigration offences and penalties leading to a request for a review may pre-date 6 April 2017. For personal licence reviews, the offences and penalties must have occurred on or after 6 April 2017.

When to request a review

The following factors should always trigger an assessment by the ALNR team or relevant ICE team of whether it would be appropriate for ICE to request a review of a personal or premises licence

The licence holder:

- has no lawful immigration status/right to work (if the licence was granted before 6 April 2017)
- has been convicted of an offence of employing an illegal worker under section 21 of the [Immigration, Asylum and Nationality Act 2006](#)
- has been required to pay a penalty, in particular:
 - a penalty under section 15 of the 2006 Act during the last 3 years ending on the date of the licence application
 - a penalty at any time which they have failed to pay
- has, at any time, been convicted of an offence under any of the Immigration Acts - as defined by section 61(2) of the [UK Borders Act 2007](#)

In the case of disqualification by reason of immigration status ((i) above), this course of action is relevant where a licence was issued before 6 April 2017, as licences granted prior to that date will not automatically lapse where they have no lawful status. In these circumstances, the onus will be on IE to inform the relevant licensing authority and request a review of the licence.

Considerations for the review of a personal licence, premises licence, or both

In every case, apart from late night refreshment, there will be a personal and premises licence to be considered. IE must determine whether to:

- request a review of the premises licence
- request a review of the personal licence
- request a review of both the premises licence and the personal licence of the designated premises supervisor (DPS)

Premises licences

It is important to think about the following:

- revoking a premises licence will generally result in the closure of the business, which will impact lawful as well as unlawful workers
- revoking a personal licence may have a significant impact on the individual but only a limited impact on the business, particularly when the personal licence holder is not the DPS - where the personal licence holder is the DPS for the business, the premises licence holder may apply to vary the licence to appoint a different DPS
- is the seriousness of the illegal working or immigration crime identified such that the only appropriate remedy is to request that the premises licence be revoked; or can the risk be mitigated by the attachment of conditions
- a premises licence applies to specific premises and, therefore, evidence must focus on the prevention of crime or prevention of illegal working in those premises - consideration may also be given to any other evidence that will be relevant to the assessment of risk, including where a business has either:
 - shown wilful or systematic disregard for the law in respect of the employment of illegal workers at any other premises
 - generally been compliant, but has received penalties in other locations, perhaps by virtue of the size of its workforce, and there is evidence that the company has sought to address deficiencies that led to the employment of illegal workers. Such evidence is likely to mitigate against requesting a review, or it may be appropriate to consider requesting licensing conditions
- is there evidence that a business has been non-compliant in another legal entity, dissolved in order to evade sanctions, and re-emerged in another name (phoenixism) and continued its noncompliant activity - if so, evidence of phoenixism should be provided in the representations to the licensing authority to supplement the information about immigration offences and penalties (it will be necessary to establish a clear connection between the 2 businesses in order to produce this in evidence)
- the request for a review must be a proportionate response based on the individual facts of the case. It must be supported by sufficient disclosable evidence - this will be shared with the licensing authority, other responsible authorities, the licence holder, and be presented at a hearing open to the public

Personal licences

IE may also request that an existing personal licence be reviewed by the relevant licensing authority:

- personal licences can only be suspended or revoked if the holder has been convicted of a relevant offence (including an offence under any of the Immigration Acts) or has received a civil penalty on or after 6 April 2017
- conditions cannot be applied to a personal licence - IE should request the review of a personal licence only where they are satisfied that there is sufficient risk to warrant the suspension or revocation of the licence, it is for the licensing authority to decide whether suspension or revocation of the licence is appropriate in the circumstances
- it would be appropriate to request a review with a view to revocation when the licence holder does not have lawful immigration status or the right to work in the UK - this is relevant to those licences issued before 6 April 2017, which do not lapse automatically when a licence holder's immigration status ends
- if the licence holder without lawful immigration status is also the DPS, and there is evidence of immigration crime or illegal working which may be attributed to the workings of the business, not exclusively the actions of the DPS, IE should consider requesting the review of the premises licence in which they are working (a premises licence has a named DPS)
- when applying for a personal licence, the applicant must disclose whether or not they have been convicted of a relevant offence or an equivalent foreign offence outside of England and Wales or received an immigration penalty - it would be appropriate to request a review if:
 - there was full disclosure of the penalties/offences and the licensing authority granted the licence (whether or not ICE made representations), and there has been a change of circumstances; or
 - the offences/penalties received on/after 6 April 2017 were not disclosed at the time of the application, and these are sufficiently serious to warrant representations at the time they have been discovered
- IE representations would be appropriate where the retention of the licence gives rise to a serious risk of illegal working in a licensed premises because of either:
 - the nature, seriousness and/or timing of the conviction for an immigration offence
 - the penalty amount and/or number of separate penalty notices issued and number of illegal workers identified in the notices, suggest a high number of illegal workers and when the penalties were issued - particular weight is given to those issued within the last 3 years or unpaid penalties of any age

Engagement with the business, other responsible authorities and the licensing authority

In general, where responsible authorities have identified problems at business premises, it is good practice to give licence holders early warning of their concerns and the need for improvement, and advice on steps required. This may be sufficient in the event where there are failings in the right to work checks, but no illegal

workers have been identified. Failure by the business to respond to the warning may lead to a decision to request a review of the licence.

ICE teams may find it helpful to discuss the results of their visit with a licensing authority and other responsible authorities, before taking a decision on its response. Since 6 April 2017, IE may submit direct representations to the relevant licensing authority, though they may wish to collaborate with other responsible authorities in seeking a review, where appropriate.

Conditions, suspension and revocation

Conditions

Conditions can only be requested in relation to a premises licence, not a personal licence.

Ask the question: can the risk of immigration crime be sufficiently mitigated by conditions being placed on the licence?

Conditions must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case. Appropriate conditions could include evidencing to immigration officials that they are complying with requirements, for example:

- the employer must demonstrate that they are carrying out checks relating to the right to work of their employees at the premises at [insert address of premises] and any prospective employees before entering into a contract of employment
- any copies of documents retained by the employer as a result of conducting checks relating to the right to work must be stored securely by the employer at the premises or a digital copy be immediately accessible from the premises for ease of inspection by immigration officials
- the employer, or any person appearing to represent the employer, must be able to produce on demand documents relating to the right to work at the request of an immigration officer who enters the premises to carry out an inspection under section 179 (1A) of the 2003 Act

Conditions may be appropriate where illegal working is identified but the employer has a statutory excuse, the employer has not heeded earlier warnings from IE, or the civil penalty is of a low value.

Payment of an outstanding penalty may not be requested as a licence condition. However, it may be referred to when making a request for a review.

Suspension

Suspension is possible in relation to premises licences, usually taken together with conditions. It is not common for a licensing authority to suspend a personal licence. IE may consider that it is necessary to request the suspension of a premises licence in order for the licence holder to address concerns they have identified at the premises and put systems in place to prevent illegal working occurring in the future. Accordingly, they may request a review with a request to suspend the premises licence, plus adding conditions such as mandating right to work checks on all existing staff and new staff.

Revocation of a licence

IE will request a review of a licence and its revocation, in circumstances in which it is considered that the risk of immigration crime and illegal working cannot be otherwise mitigated. If a premises licence is revoked, this is likely to cause the closure of the business.

It will also be the appropriate remedy in relation to a personal licence.

Serious and or repeat non-compliance may include:

- multiple civil penalties or a single penalty for a large amount
- unpaid civil penalties
- unspent immigration offences or other relevant offences
- phoenixism
- breach of a compliance order under section 38 and schedule 6 of the 2016 Act

An escalated approach

The following approach should be considered when deciding whether to initiate a licence review. It should be noted that it is not the intention that the steps below should be followed sequentially; there may be cases where the severity or scale of non-compliance (including issues other than illegal working) will require consideration of action to be taken without all preceding steps having been taken already. Such as:

- during a joint working operation led by IE; intel received prior to the visit and interviews conducted by officers identified an employee had history for drug dealing and there were concerns that the premises is being used for that purpose
- the fire exits were locked, and it was identified during an illegal working interview that the owner had told the employee to keep them locked whilst he was there on their own for security purposes
- an employee confirmed that they were the only employee working at a premise and had sole responsible for the day to day running of the premise including the sale of alcohol
- ICE officers identified that during illegal working interviews, the premise licence holder was employing underage individuals

Serious safeguarding concerns, breaches to conditions or strong evidence to show failures in meeting licensing objectives identified by ICE teams during a visit, should be considered for licence review. The primary purpose of a review is to act as a deterrent to prevent further breaches. It can also prevent any licensable activities which are causing concern from happening in future.

At all times, ICE teams are encouraged to discuss the steps they are taking in respect of specific premises with a licensing authority and other responsible authorities, before taking a decision on the most appropriate response in respect of a personal or premises licence. In all cases where illegal working is identified on a visit, and there is no evidence that the employer has a statutory excuse including when it is a first offence, the ICE team should issue a Referral Notice to the employer. The ICE team should advise the employer about the impacts that further non-compliance may have on their ability to carry out a licensable activity. If a further enforcement visit takes place at the business within a 3-year period and further illegal working offences discovered, (where there has been no change in ownership or legal entity of the business and the licence holder remains the same person) the ICE team should again issue a Referral Notice. A review of the licence should then give due consideration to seeking the application of conditions to the premises licence to encourage compliance. Dependent on the severity of the offence they may wish to consider requesting the suspension or revocation of the licence.

There may be occasions where the ICE team have visited for a third occasion within a 3-year period and further offences identified, where there has been no change in ownership or legal entity of the business and the licence holder remains the same person. In these cases of persistent non-compliance, the ICE Team must consider issuing a closure notice to temporarily close the business. In considering who the licence has transferred to, ensure attention is paid to a connected person, to rule out any abuse. Unless the notice is cancelled, issue of a closure notice must always be followed by an application to the relevant magistrates' court within the statutory timeframe for a compliance order, to apply conditions on the business. A compliance order automatically triggers the review of a licence; the court are obliged to inform the local licensing authority who will carry out the review. In practice, the ICE team will wish to follow up with the local licensing authority and the ISD ALNR to ensure the licence review is progressed.

If, following a compliance order, a further visit is conducted and breaches of the order identified, the ICE team should make a referral to their local Criminal and Financial Investigations team to consider a criminal investigation into the breach of the order. If no action has previously been taken regarding the licence, then a further review must be requested following consultation with the local CFI team.

It is important that there is a clear rationale as to why we are seeking a review of a premise licence and that we can evidence that we have engaged with an employer or premises or personal licence holder to try and modify their behaviour through education, warning and sanction. There is no need to evidence this type of engagement where serious non compliance has been identified from the outset. IE checklists are widely available which set out what a responsible employer should ask

for ahead of employing any person in order to demonstrate 'due diligence' and avoid liability for employing an illegal worker.

Where a review is requested and conditions are imposed on licensed premises they need to be proportionate and link to the licensing objectives and need to serve a purpose to fit in with the licensing objectives. IE conditions should relate to the prevention of illegal working in licensed premises.

The above considerations should be made and recorded on Pronto as this will provide important evidence in any licence review. This will show that the employer has failed to comply with their responsibilities or conditions imposed upon them and that the review of the licence is, therefore, proportionate and necessary to prevent illegal working in licensed premises; which is part of the licensing objective of preventing crime and disorder.

How to request a review

IE may make representations direct to the relevant licensing authority. Whilst they may wish to consult other responsible authorities to inform their submission, they do not need to go through them.

The form to be used to request a review of a premises licence is set out in [The Licensing Act 2003 \(Premises licences and club premises certificates\) Regulations 2005](#).

The ALNR team will work with ICE teams to obtain relevant evidence of noncompliance. The ALNR team will complete checks using Pronto and other Home Office systems on all new applications received from licensing authorities or the applicant. When review requests are required following enforcement or compliance action, ICE teams should submit evidence to the ALNR team, who will co-ordinate the review request.

It is recommended that before a licence review is requested via the ALNR team, the evidence, including consideration of the above enforcement action options, is gathered in advance. This would normally be completed within 14 days of the visit to prepare a Civil Penalty and Compliance team (CPCT) referral package and a similar package should be prepared for ISD ALNR team.

A full summary of the case, along with written witness statements, should be prepared and submitted at the time of requesting the review. It should then go through the nominated single point of contact (usually Her Majesty Inspector (HMI) or chief immigration officer (CIO)) for that team for approval and then the full pack should be scanned and submitted through to the appropriate ISD ALNR team's email address.

The referral email should contain:

- the name and address of the premises visited including the post code
- the date of the visit

- the Pronto visit reference
- power of entry used (Section 179/Warrant)
- a summary of the visit including how many immigration offenders were encountered, arrests made

The benefit to this will be that all the evidence will be submitted ahead of the request. This will allow a quality assurance check to take place, ensuring that appropriate consideration is given as to why we are seeking a review or imposing conditions and how these support the licensing objectives.

The ALNR team will assess the ICE referral and identify if the request to initiate a review is proportionate and meets licensing objectives. The ALNR team will check Home Office systems for information on the enforcement visit that allows them to make a justified assessment.

The ALNR team will email CPCT to confirm that an illegal working referral has been sent to them. CPCT will check the illegal working database and confirm if a referral has been made.

If the case has been referred to CPCT, the ALNR team will continue with the assessment and either accept, reject or request further information. If the case has not been referred to CPCT, the ALNR team will reject the referral as 'fundamentally flawed'.

If the referral is rejected, the ALNR team will provide feedback to the ICE team providing the reasons for rejection. This gives ICE teams the opportunity to discuss the decision made by the ALNR team and provide supplementary evidence to support the review request.

The review referral will be assessed, and a decision made within 3 working days. If the review is accepted, the ALNR team will prepare a review pack, outlining the circumstances of the review, and evidence all written witness statements provided by ICE teams.

The review pack is shared with the ICE team single point of contact for review and comments. Once approved, the ALNR team will initiate the review and send the application to review a premise licence application and review pack to the premise licence holder. The ALNR team will provide a redacted version of the review pack, including written witness statements provided by ICE teams and send it to the licensing authority.

The review will be completed and initiated within a maximum timeframe of 21 days.

The application to review a licence must be sent to the relevant licensing authority, the holder of the licence in respect of which the application for review has been made, and all responsible authorities (See: [section 51 of the Licensing Act 2003](#)). When another responsible authority or person makes an application to the licensing authority for the review of a licence, IE will receive a copy and may make representations when appropriate.

This does not apply to personal licences, for which requests for review must only be sent to the licensing authority which issued the licence. It may be that this is not the licensing authority for the area in which the licence holder is resident if the individual has relocated.

A nil response is not required. When there are no concerns in respect of illegal working or immigration crime, the licence review copies require no action.

Licensing hearing

All licence reviews trigger a hearing. A hearing must be arranged as a consequence of any review request. Unlike cases where representations are raised in respect of an application for a new licence, where a hearing may be avoided when all parties agree that it is not necessary, requests for the review of an existing licence always go to a hearing.

There is no requirement in the Licensing Act 2003 for IE to attend a hearing, but it is generally good practice to do so as it assists licensing committees to reach more informed decisions and ensures that sufficient weight is given to evidence submitted by IE as officers can give evidence orally.

It is envisaged that licensing authorities, the police, IE and other law enforcement agencies will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to commit further crimes, the licensing authority may consider revocation of the licence – even in the first instance.

Compliance orders

In addition, the licensing authority must automatically review a premises licence if the premises to which it relates was made the subject of a compliance order to prevent illegal working, as set out in section 167(1A) of the Licensing Act 2003, as amended by paragraph 18 of Schedule 6 to the [Immigration Act 2016](#). Information supplied by IE a review hearing triggered by a compliance order will replicate that presented in the compliance order proceedings in the magistrates' court.

When the licensing authority receives notice from a magistrates' court that it has issued a compliance order:

- the licensing authority has 28 days to determine the licence review – the determination must be made before the expiry of the 28th day after the day on which the notice is received
- the hearing must be held within 10 working days, the first of which is the day after the day the notice from the magistrates' court is received
- notice of the hearing must be given no later than 5 working days before the first hearing day (there must be 5 clear working days between the giving of the notice and the start of the hearing)

During reviews of premises licences, prompted by the issue of a compliance order by the magistrates' court, IE will give evidence of the illegal working or immigration crime committed in relation to the licensable activity carried out at the premises.

In these reviews, IE may also seek a specific course of action, such as:

- revocation of the premises licence
- removal of the DPS from the premises licence (in these cases, a request for review of the personal licence of the DPS should be made separately, in the usual way, either by ICE or the Central team - a personal licence will only be reviewed by the licensing authority where the holder of the licence has been convicted or has received an immigration civil penalty) and appointment of a new DPS (where the DPS is exclusively or primarily responsible for the offences/noncompliance in evidence)
- suspension of the premises licence (this may be for a period not exceeding 3 months)
- suspension of the premises licence and application of conditions
- addition of conditions to the premises licence (these may duplicate conditions in the compliance order, allowing the conditions to be made permanent by being on the premises licence itself)

Powers of a licensing authority on the determination of a review

The licensing authority's role will be to take action that is appropriate to ensure the promotion of the crime prevention objective which can include the prevention of immigration crime and illegal working in the licensed premises.

Premises licence

Under the licensing regime prior to 6 April 2017, requests for the review of a premises licence could be made by responsible authorities or a member of the public. The new provisions add IE to the list of responsible authorities, and they may request that a licensing authority review a premises licence.

In reviewing a premises licence, licensing authorities may take the decision (11.1611.19 of revised guidance issued under section 182 of the Licensing Act 2003):

- that the review does not require it to take any further steps appropriate to promoting the licensing objectives
- to issue an informal warning to the licence holder and/or to recommend improvement within a particular period of time
- to modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition)
- to exclude a licensable activity from the scope of the licence
- to remove the DPS, for example, because they consider that the problems are the result of their poor management
- to suspend the licence for a period not exceeding 3 months

- to revoke the licence

Personal licence

Further to the [Policing and Crime Act 2017](#), a licensing authority may review a personal licence (formerly this could only be done by a magistrates' court). The licensing authority may suspend or revoke a personal licence if the holder has committed a relevant offence (including immigration offences and civil penalties). Offences and civil immigration penalties were added to the list of relevant offences with effect from 6 April 2017 and may only be taken into consideration (for grant, revocation and suspension of personal licences) if the conviction was received on or after 6 April 2017, or they were required to pay a penalty on or after this date. Licensing authorities may revoke/suspend personal licences as long as the conviction was received on or after 6 April 2017. Only magistrates' courts can order the forfeiture or suspension of personal licences for convictions received prior to 6 April.

Conditions may not be applied to a personal licence. Following a request to review a personal licence, licensing authorities may decide:

- that the review does not require it to take any further steps appropriate to promoting the licensing objectives
- to suspend the licence for a period not exceeding 3 months
- to revoke the licence

Where a licence lapses

A premises licence will generally run indefinitely. However, it will lapse if the licence was granted in respect of an application made on or after 6 April 2017 and the holder (who is an individual) ceases to be entitled to work in the UK if they are resident here.

The licensing authority is under no duty to carry out ongoing immigration checks to see whether a licence holder's permission to be in the UK has ended. The migrant will be aware when their time-limited permission has come to an end and the Home Office will inform them if their permission to be in the UK is curtailed.

IE will seek to inform the licensing authority when they identify a licence holder whose permission to be in the UK has come to an end, so that the licensing authority can take any necessary action. An application may be made to transfer a premises licence to another person. However, that person must not themselves be disqualified by reason of their immigration status from holding a licence. IE will receive a copy of that transfer application.

Related content

[Contents](#)

Enforcement and rights of entry

Section 179 of the [Licensing Act 2003](#), in relation to rights of entry to investigate licensable activities, has been amended by the 2016 Act. Now, where an immigration officer has reason to believe that any premises is being used for the sale of alcohol or provision of late-night refreshment, the officer may enter the premises without a warrant, with a view to seeing whether an offence under any of the Immigration Acts is being committed in connection with the carrying on of these licensable activities. In the case of premises providing late night refreshment, this does not mean that the power may only be exercised between 11pm and 5am. However, it is necessary for the illegal working to be taking place **in connection with** the licensable activity, which is the provision of late-night refreshment between these hours. It must be considered that there will be sufficient evidence available of this connection available at the premises outside of the hours of 11pm to 5am in order to demonstrate a lawful and proportionate use of the right of entry outside these hours, unless officers have a reasonable belief that the sale of alcohol is also taking place.

Immigration officers, unlike police officers, are not authorised persons within the 2003 Act, but they are separately empowered by the Act to carry out their duties. The effect is to facilitate joint enforcement operations with licensing enforcement officers, and other bodies that inspect workplaces for compliance. The power of entry may also be used by Immigration Compliance and Enforcement (ICE) teams operating on their own, to investigate illegal working following receipt of intelligence on premises they have reason to believe are being used for a licensable activity.

The attachment of immigration conditions to any premises licence will be relevant to the use of this power. ICE teams will want to be aware of premises in respect of which the licensing authority has granted such conditions, in the event that they are required to inspect for compliance with these conditions.

Further operational guidance on using this power of entry is available at: Partnership working.

Related content

[Contents](#)

Annex A

Immigration representation in respect of a premises licence

On behalf of the Secretary of State, Immigration Enforcement (IE) makes representations for the following premises licence application, relating to the crime prevention objective, including the prevention of illegal working and immigration crime in licensed premises.

IE wishes to make representations on an application for a new premises licence.

Licensing authority application reference number	
Immigration Enforcement reference number	
Applicant name	
Address of premises	
<i>Immigration Enforcement Contact 1</i>	
Name	
Address	
Telephone no.	
Email address	
<i>Immigration Enforcement Contact 2 (If applicable)</i>	
Name	
Telephone no.	
Email address	

Representations are being made for the following reasons:

Offence, immigration penalty, dates, penalty amount etc.

Representation:

- objection to the grant of a premises licence to the applicant

Reasons for which there is a risk to the licensing objectives, and why the objection is appropriate to prevent crime including illegal working in licensed premises.

Date:

Related content

[Contents](#)

Annex B

Immigration representation in respect of an existing premises licence

On behalf of the Secretary of State, Immigration Enforcement (IE) makes representations for the following premises licence application, relating to the crime prevention objective, including the prevention of illegal working and immigration crime in licensed premises.

IE wishes to make representations on the application for the transfer of an existing premises licence.

Licensing authority application reference number	
Immigration Enforcement reference number	
Applicant name	
Address of premises	
<i>Immigration Enforcement Contact 1</i>	
Name	
Address	
Telephone no.	
Email address	
<i>Immigration Enforcement Contact 2 (If applicable)</i>	
Name	
Telephone no.	
Email address	

Representations are being made for the following reasons:

Offence, immigration penalty, dates, penalty amount etc.

IE objects to the grant of an application for the transfer of a premises licence to the applicant.

Reasons for which there is a risk to the licensing objectives, and why the objection is appropriate to prevent crime including illegal working in licensed premises.

Date:

Related content

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Annex C

Immigration representation to request the cancelation of an interim authority notice

Immigration Enforcement (IE) on behalf of the Secretary of State, is satisfied that, in the circumstances particular to this case, failure to cancel the interim authority notice would be prejudicial to the prevention of illegal working and immigration crime in licensed premises.

Licensing authority application reference number	
Immigration Enforcement reference number	
Applicant name	
Address of premises	
<i>Immigration Enforcement Contact 1</i>	
Name	
Address	
Telephone no.	
Email address	
<i>Immigration Enforcement Contact 2 (If applicable)</i>	
Name	
Telephone no.	
Email address	

Reasons for which continuation of the interim authority notice would be prejudicial to the prevention of illegal working:

Further comments:

(Immigration offence, penalty etc)

Date:

Related content

[Contents](#)

Annex D

Acceptable documents to demonstrate ‘a right to work’ in the UK.

The lists of documents are based on those prescribed to show evidence of a right to work and can be found within [Annex A of the Employers guide](#).

Where a right to work check has been conducted using the online service, the information is provided in real-time directly from Home Office systems and there is no requirement to carry out a manual check any of the acceptable documents.

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:

- any page containing the holder’s personal details including nationality
- any page containing the holder’s photograph
- any page containing the holder’s signature
- any page containing the date of expiry
- 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.

Related content

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