

Licensing Law Changes : April 2017

Introduction

The Government is set to introduce changes to the licensing regime to take effect on 6 April 2017.

The changes are set out in the Licensing Act 2003 (Miscellaneous Amendments) Regulations 2017 which were laid before Parliament on 16 March 2017, so the trade has not been given much time to prepare.

You will have seen my previous Briefing Notes on the Immigration Act 2016 which introduced greater powers for officers to close premises where illegal workers are employed.

Now we have changes to the forms which are used to apply for personal licences, designated premises supervisor (DPS) variations, new licences and transfer applications.

All of the changes are intended to make it more difficult for illegal workers to work in England and Wales.

Personal Licence Applications

A personal licence may not be issued to an individual who:

- Does not have the right to live and work in the UK; or
- Is subject to a condition preventing him or her from doing work relating to the carrying on of a licensable activity.

Any personal licence issued in respect of an application made on or after 6 April 2017 will

become invalid if the holder ceases to be entitled to work in the UK.

Applicants must demonstrate that they have the right to work in the UK and that they are not subject to a condition preventing them from doing work relating to the carrying on of a licensing activity. They do this by providing with the application copies or scanned copies of the specified documents (which do not need to be certified).

The documents which demonstrate entitlement to work in the UK are set out in the Appendix to this Briefing ("the Documents"). If the applicant has a UK passport, a scanned copy of this document is all that is needed. If not, the applicant must provide a copy of one of the other Documents.

Family members of European Economic Area nationals who are studying or financially independent must also provide evidence that the European Economic Area national and any family members hold comprehensive sickness insurance in the UK. This can include a private medical policy, an EHIC card or an S1, S2 or S3 form.

Originals of the Documents must not be sent to licensing authorities. If the document copied is a passport, a copy of the following pages should be provided:-

- a) Any page containing the holder's personal details including nationality;
- b) Any page containing the holder's photograph;
- c) Any page containing the holder's signature;

- d) Any page containing the date of expiry; and
- e) 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.

The Criminal Record Disclosure form is now renamed "Disclosure of Convictions and Civil Immigration Penalties and Declaration" form. As well as relevant and foreign offences, a personal licence holder is now asked to declare any civil immigration penalties received.

New Licence Applications

Individual applicants (including those in a partnership) must declare that they understand:

1. That the licence will not be issued if they do not have the entitlement to live and work in the UK; and
2. That the licence will become invalid if they cease to be entitled to live and work in the UK.

Further, the applicant must declare:

1. That the DPS named in the application is entitled to work in the UK and is not subject to conditions preventing him or her from doing work relating to a licensable activity); and
2. That the applicant has seen a copy of the DPS's proof of entitlement to work, if appropriate.

Applicants must demonstrate that they have the right to work in the UK and are not subject to a condition preventing them from doing work relating to the carrying on of a licensing activity. They do this by providing with this application copies or scanned copies of one of the Documents.

If the change in work status results in the lapse of a premise licence, an Interim Authority Notice must be submitted within 28 days in order to reinstate the licence. A copy of the Notice must be served on the Home Office Immigration Enforcement service.

DPS Variations

The application form is amended to include nationality, place of birth and date of birth.

The following warning has been added to the application form:

"It is an offence under section 24B of the immigration Act 1971 for a person to work when they know, or have reasonable cause to believe, that they are disqualified from doing so by reason of their immigration status. Those who employ an adult without leave or who is subject to conditions as to employment will be liable to a civil penalty under section 15 of the immigration, asylum and nationality Act 2006 and, pursuant to section 21 of the same act, will be committing an offence where they do so in the knowledge, or with reasonable cause to believe, that the employee is disqualified."

The consent form includes the following:

"I also confirm that I am entitled to work in the United Kingdom and am applying for, intend to apply for or currently hold a personal licence, details of which I set out below."

Transfer Applications

Again individual applicants will now have to supply a Document as proof that they are able to work in the UK.

In addition, a copy of the transfer application must be served on the Secretary of State who is now a responsible authority.

If satisfied that the exceptional circumstances of the case are such that granting the application would be prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must give the relevant licensing authority a notice, within 14 days of having been notified of the application, stating the reasons for being so satisfied.

Where the above notice is given, the Licensing Authority must reject the application if it considers it appropriate for the prevention of illegal working in licensed premises to do so.

Buyers of licensed premises should ensure that their due diligence includes enquiries concerning

any history of immigration law convictions or penalties. We would expect Secretary of State objections to be few and far between but cautious buyers may seek appropriate warranties from their seller.

A belt and braces approach is for completion to be more than 14 days after the date the transfer application is served. This will be problematic as few sellers would agree to this. Catch 22 - I am afraid!

Conclusion

This is more red tape, more bureaucracy for the licensed trade. We expect many issues with applications as the new regulations bed in. It is vitally important that all owners of licensed premises know who is working at their premises at all times and that they establish that those persons have the appropriate status to legally live and work in the UK and that their authority to stay in the UK does not include conditions that may prevent their working at the establishment.

If you have any questions about these changes do contact the Commercial Real Estate and Licensing Team at Winckworth Sherwood.

For further information, please contact:



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Appendix

Documents which demonstrate entitlement to work in the UK

- An expired or current passport showing the holder, or a person named in the passport as the child of the holder, is a British Citizen of the UK and Colonies having the right of abode in the UK [please see note above about which sections of the passport to copy].
- An expired or current passport or national identity card showing the holder, or a person named in the passport as the child of the holder is a national of a European Economic Area country or Switzerland.
- A Registration Certificate or document certifying permanent residence issued by the Home Office to a national of a European Economic Area country or Switzerland.
- A Permanent Residence Card issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland.
- A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
- A **current** passport endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.
- A **current** Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A **full** birth or adoption certificate issued in the UK, which includes the name(s) of at least one of the holder's parents or adoptive parents, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A certificate of registration or naturalisation as a British Citizen, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A **current** passport endorsed to show that the holder is allowed to stay in the UK and is currently allowed to work and is not subject to a condition preventing the holder from doing work relating to the carrying on of a licensable activity.
- A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the named person can currently stay in the UK and is allowed to work relation to the carrying on of a licensable activity.
- A **current** Residence Card issued by the Home Office to a person who is not a national of a European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights or residence.
- A **current** Immigration Status Document containing a photograph issued by the Home Office to the holder with an endorsement indicating that the named person may stay in the UK, and is allowed to work and is not subject to a condition preventing the holder from doing work relating to the carrying on of a licensable activity **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

- A Certificate of Application, **less than 6 months old**, issued by the Home Office under regulation 17(3) or 18A (2) of the Immigration (European Economic Area) Regulations 2006, to a person who is not a national of a European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights of residence.
- Reasonable evidence that the person has an outstanding application to vary their permission to be in the UK with the Home Office such as the Home Office acknowledgement letter or proof of postage evidence, or reasonable evidence that the person has an appeal or administrative review pending on an immigration decision, such as an appeal or administrative review reference number.
- Reasonable evidence that a person who is not a national of a European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights of residence in exercising treaty rights in the UK including:-
 - Evidence of the applicant's own identity – such as a passport,
 - Evidence of their relationship with the European Economic Area family member – e.g. a marriage certificate, civil partnership certificate or birth certificate, and
 - Evidence that the European Economic Area national has a right of permanent residence in the UK or is one of the following if they have been in the UK for more than 3 months:
 - Working e.g. employment contract, wage slips, letter from employer,
 - self-employed e.g. contracts, invoices, or audited accounts with a bank,
 - studying e.g. letter from the school, college or university and evidence of sufficient funds; or
 - self-sufficient e.g. bank statements.