

## SCHEDULES

### SCHEDULE 4

Section 36

#### LICENSING ACT 2003: AMENDMENTS RELATING TO ILLEGAL WORKING

##### PART 1

###### ENTITLEMENT TO WORK IN THE UNITED KINGDOM

1 After section 192 of the Licensing Act 2003 insert—

###### “192A Entitlement to work in the United Kingdom

- (1) For the purposes of this Act an individual is entitled to work in the United Kingdom if—
- (a) the individual does not under the Immigration Act 1971 require leave to enter or remain in the United Kingdom, or
  - (b) the individual has been granted such leave and the leave—
    - (i) is not invalid,
    - (ii) has not ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), and
    - (iii) is not subject to a condition preventing the individual from doing work relating to the carrying on of a licensable activity within section 1(1)(a) or (d).
- (2) Where an individual is on immigration bail within the meaning of Part 1 of Schedule 10 to the Immigration Act 2016—
- (a) the individual is to be treated for the purposes of subsection (1) as if the individual had been granted leave to enter the United Kingdom, but
  - (b) any condition as to the individual’s work in the United Kingdom to which the individual’s immigration bail is subject is to be treated for those purposes as a condition of leave.”

##### PART 2

###### PREMISES LICENCES

2 Part 3 of the Licensing Act 2003 (premises licences) is amended as follows.

3 In section 13(4) (meaning of “responsible authority”), after paragraph (h) insert—

- “(ha) where the premises (not being a vessel) are being, or are proposed to be, used for a licensable activity within section 1(1)(a) or (d), the Secretary of State.”.

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- 4 (1) Section 16 (applicant for premises licence) is amended as follows.
- (2) In subsection (1), at the beginning insert “Subject to subsections (2) and (2A)”.
- (3) In subsection (2), omit “But”.
- (4) After subsection (2) insert—
- “(2A) An individual who is resident in the United Kingdom may not apply for a premises licence authorising premises to be used for a licensable activity within section 1(1)(a) or (d) unless the individual is entitled to work in the United Kingdom.”
- 5 In section 27 (death, incapacity, insolvency etc of licence holder), after subsection (1) insert—
- “(1A) A premises licence that authorises premises to be used for a licensable activity within section 1(1)(a) or (d) also lapses if the holder of the licence ceases to be entitled to work in the United Kingdom at a time when the holder of the licence is resident in the United Kingdom (or becomes so resident without being entitled to work in the United Kingdom).”
- 6 (1) Section 42 (application for transfer of premises licence) is amended as follows.
- (2) After subsection (2) insert—
- “(2A) Where the applicant is an individual who is resident in the United Kingdom and the premises licence authorises premises to be used for a licensable activity within section 1(1)(a) or (d) he must also be entitled to work in the United Kingdom.”
- (3) After subsection (5) insert—
- “(5ZA) Where the premises licence authorises premises to be used for a licensable activity within section 1(1)(a) or (d), the relevant person must also give notice of the application to the Secretary of State.”
- (4) In subsection (5A), for “subsection (5)” substitute “subsections (5) and (5ZA)”.
- (5) After subsection (7) insert—
- “(8) Where the Secretary of State is given notice under subsection (5ZA) and is satisfied that the exceptional circumstances of the case are such that granting the application would be prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must give the relevant licensing authority a notice stating the reasons for being so satisfied.
- (9) The Secretary of State must give that notice within the period of 14 days beginning with the day on which the Secretary of State is notified of the application under subsection (5ZA).”
- 7 (1) Section 44(5) (determination of transfer application) is amended as follows.
- (2) In the words before paragraph (a), after “section 42(6)” insert “or (8)”.
- (3) In paragraph (a), for “chief officer of police” substitute “person”.
- (4) For paragraph (b) substitute—
- “(b) having regard to the notice—

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- (i) where the notice is given under section 42(6), reject the application if it considers it appropriate for the promotion of the crime prevention objective to do so, or
  - (ii) where the notice is given under section 42(8), reject the application if it considers it appropriate for the prevention of illegal working in licensed premises to do so.”
- 8 (1) Section 45 (notification of determination under section 44) is amended as follows.
  - (2) In subsection (2)—
    - (a) after “that section” insert “or the Secretary of State gave a notice under subsection (8) of that section”;
    - (b) for “(and it” substitute “(which, in either case,”.
  - (3) After subsection (2) insert—

“(2A) Where the Secretary of State gave a notice under subsection (8) of section 42 (which was not withdrawn), the notice under subsection (1) of this section must also be given to the Secretary of State.”
- 9 (1) Section 47 (interim authority notice following death etc of licence holder) is amended as follows.
  - (2) In subsection (1)—
    - (a) after “or (c)” insert “or (1A)”;
    - (b) after “holder” insert “or change of immigration status”.
  - (3) In subsection (3), after “subject to” insert “subsection (3A) and”.
  - (4) After subsection (3) insert—

“(3A) Where the premises licence authorises premises to be used for a licensable activity within section 1(1)(a) or (d), a person falling within subsection (2) (a) or (b) who is an individual who is resident in the United Kingdom may give an interim authority notice only if the person is entitled to work in the United Kingdom.”
  - (5) In subsection (7), after paragraph (a) insert—

“(aa) where the premises licence authorises premises to be used for a licensable activity within section 1(1)(a) or (d), at the end of the initial 28 day period unless before that time the person who gave the interim authority notice has given a copy of the notice to the Secretary of State;”.
  - (6) In subsection (7A)—
    - (a) in paragraph (a), for “subsection (7)(a) does” substitute “paragraphs (a) and (aa) of subsection (7) do”;
    - (b) in paragraph (b), at the end insert “and, where the premises licence authorises premises to be used for a licensable activity within section 1(1)(a) or (d), to the Secretary of State.”
- 10 (1) Section 48 (cancellation of interim authority notice following police objections) is amended as follows.
  - (2) In the heading, omit “police”.

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- (3) In subsection (1), for “This section” substitute “Subsection (2)”.
- (4) After subsection (2) insert—
- “(2A) Subsection (2B) applies where—
- (a) an interim authority notice by a person (“the relevant person”) is given in accordance with section 47,
- (b) the Secretary of State is given a copy of the interim authority notice before the end of the initial 28 day period (within the meaning of that section), and
- (c) the Secretary of State is satisfied that the exceptional circumstances of the case are such that a failure to cancel the interim authority notice would be prejudicial to the prevention of illegal working in licensed premises.
- (2B) The Secretary of State must before the end of the second working day following receipt of the copy of the interim authority notice give the relevant licensing authority a notice stating why the Secretary of State is so satisfied.”
- (5) In subsection (3)—
- (a) in the words before paragraph (a), for “by the chief officer of police” substitute “under subsection (2) or (2B)”;
- (b) in paragraph (a), for “chief officer of police” substitute “person who gave the notice”;
- (c) for paragraph (b) substitute—
- “(b) having regard to the notice—
- (i) where the notice is given under subsection (2), cancel the interim authority notice if it considers it appropriate for the promotion of the crime prevention objective to do so, or
- (ii) where the notice is given under subsection (2B), cancel the interim authority notice if it considers it appropriate for the prevention of illegal working in licensed premises to do so.”
- (6) After subsection (5) insert—
- “(5A) Where an interim authority notice is cancelled under subsection (3)(b) (ii), the licensing authority must also give a copy of the notice under subsection (4) to the Secretary of State.”
- 11 In section 50 (reinstatement of licence on transfer following death etc of holder), in subsection (3), for “(who, in the case of an individual, is aged 18 or over)” substitute “(and who would, where applicable, satisfy subsections (2) and (2A) of section 42)”.

### PART 3

#### PERSONAL LICENCES

- 12 Part 6 of the Licensing Act 2003 (personal licences) is amended as follows.

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- 13 (1) Section 113 (meaning of “relevant offence” and “foreign offence”) is amended as follows.
- (2) In the heading, for “and “foreign offence”” substitute “, “immigration offence”, “foreign offence” and “immigration penalty””.
- (3) After subsection (2) insert—
- “(2A) In this Part “immigration offence” means—
- (a) an offence referred to in paragraph 7A of Schedule 4, or
  - (b) an offence listed in paragraph 24 or 25 of Schedule 4 that is committed in relation to an offence referred to in paragraph 7A of that Schedule.”
- (4) At the end insert—
- “(4) In this Part “immigration penalty” means a penalty under—
- (a) section 15 of the Immigration, Asylum and Nationality Act 2006 (“the 2006 Act”), or
  - (b) section 23 of the Immigration Act 2014 (“the 2014 Act”).
- (5) For the purposes of this Part a person to whom a penalty notice under section 15 of the 2006 Act has been given is not to be treated as having been required to pay an immigration penalty if—
- (a) the person is excused payment by virtue of section 15(3) of that Act, or
  - (b) the penalty is cancelled by virtue of section 16 or 17 of that Act.
- (6) For the purposes of this Part a person to whom a penalty notice under section 15 of the 2006 Act has been given is not to be treated as having been required to pay an immigration penalty until such time as—
- (a) the period for giving a notice of objection under section 16 of that Act has expired and the Secretary of State has considered any notice given within that period, and
  - (b) if a notice of objection was given within that period, the period for appealing under section 17 of that Act has expired and any appeal brought within that period has been finally determined, abandoned or withdrawn.
- (7) For the purposes of this Part a person to whom a penalty notice under section 23 of the 2014 Act has been given is not to be treated as having been required to pay an immigration penalty if—
- (a) the person is excused payment by virtue of section 24 of that Act, or
  - (b) the penalty is cancelled by virtue of section 29 or 30 of that Act.
- (8) For the purposes of this Part a person to whom a penalty notice under section 23 of the 2014 Act has been given is not to be treated as having been required to pay an immigration penalty until such time as—
- (a) the period for giving a notice of objection under section 29 of that Act has expired and the Secretary of State has considered any notice given within that period, and
  - (b) if a notice of objection was given within that period, the period for appealing under section 30 of that Act has expired and any appeal

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

- 14 (1) Section 115 (period of validity of personal licence) is amended as follows.
- (2) In subsection (2), after “subsections” insert “(2A),”.
- (3) After subsection (2) insert—
- “(2A) A personal licence ceases to have effect if the holder of the licence ceases to be entitled to work in the United Kingdom.”
- 15 (1) Section 120 (determination of application for grant) is amended as follows.
- (2) In subsection (2)—
- (a) after paragraph (a) insert—
- “(aa) he is entitled to work in the United Kingdom,”;
- (b) in paragraph (d), at the end insert “or required to pay an immigration penalty”.
- (3) In subsection (3), for “paragraph (a), (b) or (c)” substitute “any of paragraphs (a) to (c)”.
- (4) In subsection (4), for “(a), (b) and (c)” substitute “(a) to (c)”.
- (5) In subsection (5)—
- (a) omit the “and” at the end of paragraph (a);
- (b) at the end of paragraph (b) insert “and
- (c) the applicant having been required to pay any immigration penalty,”.
- (6) After subsection (5) insert—
- “(5A) If it appears to the authority that the applicant meets the conditions in paragraphs (a) to (c) of subsection (2) but fails to meet the condition in paragraph (d) of that subsection by virtue of having been—
- (a) convicted of an immigration offence,
- (b) convicted of a foreign offence that the authority considers to be comparable to an immigration offence, or
- (c) required to pay an immigration penalty,
- the authority must give the Secretary of State a notice to that effect.
- (5B) Where, having regard to—
- (a) any conviction of the applicant for an immigration offence,
- (b) any conviction of the applicant for a foreign offence which the Secretary of State considers to be comparable to an immigration offence, and
- (c) the applicant having been required to pay any immigration penalty,
- the Secretary of State is satisfied that granting the licence would be prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must, within the period of 14 days beginning with the day the Secretary of State received the notice under subsection (5A), give the authority a notice stating the reasons for being so satisfied (an “immigration objection notice”).”

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- (7) In subsection (6), for “is given within that period (or the notice is withdrawn)” substitute “or immigration objection notice is given within the period of 14 days referred to in subsection (5) or (5B) (as the case may be), or any such notice given is withdrawn.”.
- (8) In subsection (7)—
- (a) in the words before paragraph (a), for “In any other case,” substitute “Where an objection notice or an immigration objection notice is given within the period of 14 days referred to in subsection (5) or (5B) (as the case may be), and not withdrawn,”;
  - (b) in paragraph (a)—
    - (i) omit “objection”;
    - (ii) for “chief officer of police” substitute “person who gave the notice”;
  - (c) for paragraph (b) substitute—
    - “(b) having regard to the notice, must—
      - (i) where the notice is an objection notice, reject the application if it considers it appropriate for the promotion of the crime prevention objective to do so, or
      - (ii) where the notice is an immigration objection notice, reject the application if it considers it appropriate for the prevention of illegal working in licensed premises to do so.”
- (9) After subsection (7) insert—
- “(7A) An application that is not rejected by the authority under subsection (7)(b) must be granted by it.”
- 16 (1) Section 122 (notification of determinations) is amended as follows.
- (2) In subsection (1)—
- (a) after “objection notice” insert “or the Secretary of State gave an immigration objection notice”;
  - (b) after “(which” insert “, in either case,”.
- (3) After subsection (2) insert—
- “(2A) Where the Secretary of State gave an immigration objection notice (which was not withdrawn) the notice under subsection (1)(a) or (2), as the case may be, must also be given to the Secretary of State.”
- (4) In subsection (3), in the definition of “objection notice”, for “has” substitute “and “immigration objection notice” have”.
- 17 (1) Section 123 (duty to notify licensing authority of convictions during application period) is amended as follows.
- (2) In the heading, after “convictions” insert “etc”.
- (3) In subsection (1)—
- (a) after “application period” insert “, or is required to pay an immigration penalty during that period”;
  - (b) after “conviction” insert “or the requirement to pay (as the case may be)”.

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- 18 (1) Section 124 (convictions coming to light after grant) is amended as follows.
- (2) In subsection (1)—
- (a) for “(“the offender”)” substitute “(“the licence holder”);
  - (b) at the end insert “or was required during that period to pay an immigration penalty”.
- (3) In subsection (3)—
- (a) in paragraph (a)—
    - (i) for “applicant” substitute “licence holder”;
    - (ii) for “, and” substitute “which occurred before the end of the application period.”;
  - (b) in paragraph (b), after “relevant offence” insert “and which occurred before the end of the application period”;
  - (c) at the end of paragraph (b) insert “and
    - (c) the licence holder having been required before the end of the application period to pay any immigration penalty.”;
  - (d) in the words after paragraph (b), omit “which occurred before the end of the application period.”.
- (4) After subsection (3) insert—
- “(3A) Where the licence holder was (during the application period)—
- (a) convicted of an immigration offence,
  - (b) convicted of a foreign offence that the licensing authority considers to be comparable to an immigration offence, or
  - (c) required to pay an immigration penalty,
- the authority must give the Secretary of State a notice to that effect.
- (3B) Where, having regard to—
- (a) any conviction of the licence holder for an immigration offence which occurred before the end of the application period,
  - (b) any conviction of the licence holder for a foreign offence which the Secretary of State considers to be comparable to an immigration offence and which occurred before the end of the application period, and
  - (c) the licence holder having been required before the end of the application period to pay any immigration penalty,
- the Secretary of State is satisfied that continuation of the licence would be prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must, within the period of 14 days beginning with the day the Secretary of State received the notice under subsection (3A), give the authority a notice stating the reasons for being so satisfied (an “immigration objection notice”).”
- (5) In subsection (4)—
- (a) in the words before paragraph (a), for “is given within that period” substitute “or an immigration objection notice is given within the period of 14 days referred to in subsection (3) or (3B), as the case may be.”;
  - (b) in paragraph (a)—
    - (i) omit “objection”;



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- (ii) for “holder of the licence, the chief officer of police” substitute “licence holder, the person who gave the notice”;
  - (c) in paragraph (b), for the words from “revoke” to the end of the paragraph substitute “—
    - (i) where the notice is an objection notice, revoke the licence if it considers it appropriate for the promotion of the crime prevention objective to do so, or
    - (ii) where the notice is an immigration objection notice, revoke the licence if it considers it appropriate for the prevention of illegal working in licensed premises to do so.”
- (6) After subsection (5) insert—
- “(5A) Where the authority revokes or decides not to revoke a licence under subsection (4)(b)(ii) it must also notify the Secretary of State of the decision and its reasons for making it.”
- 19 (1) Section 125(3) (form of personal licence) is amended as follows.
- (2) For “of each” substitute “of—
    - (a) each”.
  - (3) At the end insert—
    - “(b) each immigration penalty that the holder has been required to pay and the date of each notice by which such a penalty was imposed.”
- 20 (1) Section 132 (licence holder’s duty to notify licensing authority of convictions) is amended as follows.
- (2) In the heading, after “convictions” insert “etc”.
  - (3) After subsection (2) insert—
    - “(2A) Subsection (2B) applies where the holder of a personal licence is required to pay an immigration penalty.
    - (2B) The holder must, as soon as reasonably practicable after being required to pay the penalty, give the relevant licensing authority a notice containing details of the penalty, including the date of the notice by which the penalty was imposed.”
  - (4) In subsection (3), after “(2)” insert “or (2B)”.
- 21 In Schedule 4 (personal licence: relevant offences), after paragraph 7 insert—
- “7A An offence under any of the Immigration Acts.”

## PART 4

### RIGHTS OF ENTRY

- 22 (1) Section 179 of the Licensing Act 2003 (rights of entry to investigate licensable activities) is amended as follows.
- (2) After subsection (1) insert—

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“(1A) Where an immigration officer has reason to believe that any premises are being used for a licensable activity within section 1(1)(a) or (d), the officer may enter the premises with a view to seeing whether an offence under any of the Immigration Acts is being committed in connection with the carrying on of the activity.”

(3) In subsection (2)—

- (a) after “authorised person” insert “or an immigration officer”;
- (b) for “the power”, in the first place it occurs, substitute “a power”.

(4) In subsection (3), for “the power” substitute “a power”.

(5) In subsection (4), after “authorised person” insert “or an immigration officer”.

(6) In subsection (6)—

- (a) omit “and” at the end of the definition of “authorisation”;
- (b) at the end of the subsection insert—  
““immigration officer” means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971.”

## PART 5

### APPEALS

23 Schedule 5 to the Licensing Act 2003 (appeals) is amended as follows.

24 (1) Paragraph 6 (transfer of licence) is amended as follows.

(2) In sub-paragraph (1)—

- (a) after “42(6)” insert “or the Secretary of State gave a notice under section 42(8)”;
- (b) after “(which” insert “, in either case,”.

(3) In sub-paragraph (2), after “police” insert “or the Secretary of State, as the case may be,”.

25 (1) Paragraph 7 (interim authority notice) is amended as follows.

(2) In sub-paragraph (1)(b)—

- (a) after “48(2)” insert “or the Secretary of State gives a notice under section 48(2B)”;
- (b) after “(which” insert “, in either case,”.

(3) In sub-paragraph (3), for “the notice under that subsection,” substitute “the interim authority notice under section 48(3) after the giving of a notice by a chief officer of police under section 48(2),”.

(4) After sub-paragraph (3) insert—

“(3A) Where the relevant licensing authority decides not to cancel the interim authority notice under section 48(3) after the giving of a notice by the Secretary of State under section 48(2B), the Secretary of State may appeal against that decision.”

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- 26 In paragraph 9 (general provision about appeals under Part 1 of Schedule 5), in sub-paragraph (4), after “paragraph 7(3)” insert “or (3A)”.
- 27 (1) Paragraph 17 (personal licences) is amended as follows.
- (2) In sub-paragraph (2)—
- (a) for “section 120(7)” substitute “120(7A) after the giving of a notice under section 120(5)”;
- (b) for “objection notice (within the meaning of section 120(5))” substitute “notice”.
- (3) After sub-paragraph (2) insert—
- “(2A) Where a licensing authority grants an application for a personal licence under section 120(7A) after the giving of a notice under section 120(5B), the Secretary of State may appeal against that decision.”
- (4) After sub-paragraph (5) insert—
- “(5A) Where in a case to which section 124 applies—
- (a) the Secretary of State gives a notice under subsection (3B) of that section (and does not later withdraw it), and
- (b) the licensing authority decides not to revoke the licence,
- the Secretary of State may appeal against the decision.”
- (5) In sub-paragraph (8), for “(2), (3) or (5)” substitute “(2), (2A), (5) or (5A)”.
- 28 At the end insert—

#### **“PART 4**

##### QUESTIONS ABOUT LEAVE TO ENTER OR REMAIN IN THE UK

- 19 On an appeal under this Schedule, a magistrates’ court is not entitled to entertain any question as to whether—
- (a) an individual should be, or should have been, granted leave to enter or remain in the United Kingdom, or
- (b) an individual has, after the date of the decision being appealed against, been granted leave to enter or remain in the United Kingdom.”

#### **PART 6**

##### GENERAL

- 29 In section 10 of the Licensing Act 2003, (sub-delegation of functions by licensing committee etc), in subsection (4)(a), in sub-paragraphs (v), (vi) and (x), omit “police”.
- 30 (1) Section 193 of the Licensing Act 2003 (other definitions) is amended as follows.
- (2) The existing text becomes subsection (1).
- (3) After that subsection insert—

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“(2) For the purposes of references in this Act to the prevention of illegal working in licensed premises, a person is working illegally if by doing that work at that time the person is committing an offence under section 24B of the Immigration Act 1971.”

31 In section 194 of the Licensing Act 2003 (index of defined expressions), insert the following entries at the appropriate places—

“entitled to work in the United Kingdom | section 192A”

“immigration offence | section 113”

“immigration penalty (and required to pay, in relation to an immigration penalty) | section 113”

“working illegally, in relation to the prevention of illegal working in licensed premises | section 193”

32 In the Police Reform and Social Responsibility Act 2011, omit sections 109(9) and (10) and 111(3) and (5).

## PART 7

### TRANSITIONAL PROVISION

33 The amendments of sections 13, 16, 42, 47 and 120 of the Licensing Act 2003 made by paragraphs 3, 4, 6, 9 and 15 respectively of this Schedule do not apply in relation to applications made, or interim authority notices given, before the coming into force of the respective paragraph.

34 The amendment of section 27 of the Licensing Act 2003 made by paragraph 5 of this Schedule does not apply in relation to a premises licence granted pursuant to an application made before the coming into force of that paragraph.

35 The amendments of section 115 of the Licensing Act 2003 made by paragraph 14 of this Schedule do not apply in relation to a personal licence granted pursuant to an application made before the coming into force of that paragraph.

36 The amendment of Schedule 4 to the Licensing Act 2003 made by paragraph 21 of this Schedule applies on and after the coming into force of that paragraph in relation to—

- (a) personal licences granted before, on or after the coming into force of that paragraph, and
- (b) offences committed before, on or after the coming into force of that paragraph.