



*Please reply to:*

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Date: 6 October 2017

## **Notice of meeting**

### **Licensing Sub-Committee**

**Date:** Monday, 16 October 2017

**Time:** 10.00 am

**Place:** Council Chamber, Council Offices, Knowle Green, Staines-upon-Thames

#### **To the members of the Licensing Sub-Committee**

Councillors:

R.W. Sider BEM (Chairman)

R.O. Barratt

S.M. Doran

**Note:** In the event of one of the aforementioned Licensing Committee Members being unable to attend or serve on this Sub-Committee another Member of the Licensing Committee will be called to serve in their place.

**Spelthorne Borough Council, Council Offices, Knowle Green**

**Staines-upon-Thames TW18 1XB**

[www.spelthorne.gov.uk](http://www.spelthorne.gov.uk) [customer.services@spelthorne.gov.uk](mailto:customer.services@spelthorne.gov.uk) Telephone 01784 451499

## **AGENDA**

**Page nos.**

**1. Disclosures of Interest**

To receive any disclosures of interest from members in accordance with the Members' Code of Conduct.

**2. To consider an application for review of the Premises Licence at Indian Ocean, 359 Staines Road West, Ashford, TW15 1RP**

**3 - 46**

The Report of the Deputy Chief Executive is attached.

A procedure note which explains what happens at a Licensing Sub-Committee, follows.

## Licensing Act 2003

### Hearing procedure for Licensing Sub-Committee – Premises Licence Review

	<b>Introductions</b>
1.	The Chairman will open the meeting, introduce members of the Sub-Committee and officers present and explain the nature of the decision to be taken and the procedure to be followed.
2.	All persons present to introduce themselves to the Sub-Committee. <i>*NOTE*</i> the Applicant for a <u>review</u> is either a Responsible Authority or an Other Person. The Premises Licence Holder is a “respondent”.
	<b>Summary of Application and Representations</b>
3.	The Council's Licensing Manager will outline the application, any relevant representations and highlight any points relevant to the Licensing Authority's Statement of Licensing Policy and statutory guidance. OR summarise the salient points of the report on the agenda.
4.	The Applicant for the review or their representative may ask relevant questions of the Council's solicitor/Licensing Manager.
5.	The Responsible Authorities may ask relevant questions of the Council's Licensing Manager if necessary.
6.	Any Other Persons who have submitted representations about the application may ask relevant questions of the Council's Licensing Manager if necessary.
7.	The Premises Licence Holder may ask the Licensing Manager <b>QUESTIONS</b> arising from what he/she has said or relating to the application. (The Applicant will have the opportunity to state his/her case later).
8.	The members of the Sub-Committee may ask relevant questions of the Council's Licensing Manager.
9.	The Council's Licensing Manager may respond to any new issues raised.
	<b>The Applicant's Case</b>
10.	The Responsible Authorities or Other Persons applying for the review presents their case (may include evidence of witnesses if appropriate).
11.	The Responsible Authorities who have submitted representations about the application may ask any relevant questions of the applicant for the review if necessary.

12.	Any Other Persons who have submitted representations about the application may ask any relevant questions of the applicant for the review if necessary.
13.	The Premises Licence Holder asks questions of the Applicant for the review if necessary.
14.	The members of the Sub-Committee may ask relevant questions of the Applicant for the review.
15.	The Applicant for Review may respond to any new issues raised.
	<b>The Responsible Authorities case</b>
16.	The Responsible Authorities who have submitted representations about the application will present their case (may include evidence of witnesses if appropriate).
17.	The Applicant for the review or their representative may ask relevant questions of the Responsible Authorities.
18.	Any Other Persons who have submitted representations about the application may ask relevant questions of the Responsible Authorities.
19.	The Premises Licence Holder may ask relevant questions of the Responsible Authorities who have submitted representations about the application.
20.	The members of the Sub-Committee may ask relevant questions of the Responsible Authorities.
21.	The Responsible Authorities may respond to any new issues raised.
	<b>The Other Persons Case</b>
22.	Any Other Persons who have submitted representations about the application will present their case (may include evidence of witnesses if appropriate).
23.	The Applicant for Review or their representative may ask relevant questions of the Other Persons.
24.	The Responsible Authorities who have submitted representations about the application may ask relevant questions of the Other Persons who have submitted representations about the application.
25.	The Premises Licence Holder may ask relevant questions of the Other Persons who have submitted representations about the application.
26.	The members of the Sub-Committee may ask relevant questions of the Other Persons who have submitted representations about the application.
27.	The Other Persons may respond to any new issues raised.

	<b>The Premises Licence Holder Case</b>
28.	The Premises Licence Holder will present their case (may include evidence of witnesses if appropriate).
29.	The Applicant for the review or their representative may ask any relevant questions of the Premises Licence Holder.
30.	The Responsible Authorities who have submitted representations about the application may ask relevant questions of the Premises Licence Holder.
31.	Any Other Persons who have submitted representations about the application may ask relevant questions of the Premises Licence Holder.
32.	The members of the Sub-Committee may ask relevant questions of the Premises Licence Holder.
33.	The Premises Licence Holder may respond to any new issues raised.
	<b>Summing Up</b>
34.	The Chairman will invite the Licensing Enforcement Officer to clarify any technical points.
35.	The Chairman will invite any Other Persons who have submitted representations about the application to briefly summarise their case if they so wish.
36.	The Chairman will invite any Responsible Authorities who have submitted representations about the application to briefly summarise their case if they so wish.
37.	The Chairman will invite the Applicant for the review to briefly summarise their case if they so wish.
38.	The Chairman will invite the Premises Licence Holder to briefly summarise their case if they so wish.
39.	The Chairman will then ask all parties if they are satisfied they have said all they wish to. <b>(NOTE – The Premises Licence Holder to have the last word.)</b>

	<b>Decision</b>
40.	The members of the Sub-Committee will retire to reach a decision in private, accompanied by the Council's legal officer and Committee Manager.
41.	Members of the Sub-Committee return. The Chairman will announce the decision of the Sub-Committee with reasons (summary or full) for the decision.

42.	Meeting closed.
43.	The Council's legal officer will remain in the room to assist all parties should they require clarification of the decision and/or next steps.

**GUIDANCE NOTES**

\*The Licensing Authority will allow the parties an equal maximum period of time in which to address the Sub-Committee, but request that all parties keep points pertinent and the discussion moving in the interests of cost and efficiency. However, the overriding principle for the Licensing Authority will be to ensure that all parties receive a fair hearing.

- (a) Cross examination of parties is at the discretion of the Sub-Committee.
- (b) When the Premises Licence Holder questions the Licensing Manager or any other party he/she should not go into the merits of his/her case as he/she will have an opportunity to present it at Stage 28. He/she should only ask questions relating to what the Licensing Manager or other person has said or relating to the application as a whole.
- (c) The Applicant or any other party may be represented by a friend or a professional person to speak on his/her behalf who will follow the same procedure as described above and who may call the Applicant as a witness.
- (d) The order or proceedings may be varied by the Chairman if he/she thinks that it is necessary to do so in the interests of affording the Applicant a fair hearing or in order to take into account all relevant considerations.
- (e) If, after the Sub-Committee has withdrawn to make their decision, they decide that they need to ask a question of any of the parties involved in the proceedings or to clarify any matter then they shall do so in the presence of all parties.
- (f) Members of the Sub-Committee must be present throughout the hearing and must not communicate with any party involved in the proceedings except for when they are in the presence of all of the parties and the remainder of the Sub-Committee.

# Licensing Sub-Committee

16/10/2017



<b>Subject</b>	Application for a <b>review</b> of the Premises Licence at Indian Ocean, 359 Staines Road West, Ashford TW15 1RP		
<b>Purpose</b>	For determination		
<b>Report of</b>	Deputy Chief Executive	Ward	Ashford Common
<b>Contact</b>	Lucy Hopkins, Licensing Enforcement Officer, 01784 444295		

<b>Description and Location</b>	<p>The Indian Ocean is a restaurant situated in a local shopping parade with residential properties above and nearby.</p> <p>A location plan is attached at <b>Appendix A</b>.</p>
<b>The Application</b>	<p>The application is to review the Premises Licence under the Licensing Objective for the prevention of crime and disorder and has been served by Home Office Immigration Enforcement.</p> <p>The current licence is attached at <b>Appendix B</b>. The review application is attached at <b>Appendix C</b>.</p>
<b>Options</b>	<ol style="list-style-type: none"><li>1. The Sub-Committee is requested to consider the application for the review of a premises licence on its merits.</li><li>2. Having had regard to the representations, the Sub-Committee must decide on one or more of the following options as it considers appropriate for the promotion of the licensing objectives:<ul style="list-style-type: none"><li>• <b>Modify the conditions</b></li><li>• <b>Exclude a licensable activity</b></li><li>• <b>Remove the Designated Premises Supervisor</b></li><li>• <b>Suspend the licence for up to 3 months</b></li><li>• <b>Revoke the licence</b></li><li>• <b>No action required</b></li></ul></li></ol>

## **1. Background**

- 1.1 Mr Masum Ahmed is both the Premise Licence Holder and the Designated Premises Supervisor of the Indian Ocean in Ashford. Mr Ahmed has held the Premise Licence since 14 May 2007.
- 1.2 Surrey Police notified the Council's Licensing team that they had encountered one immigration offender at the Indian Ocean on 15 July 2009.
- 1.3 Following receipt of the review application, the Council's Licensing Enforcement Officers ("LEOs") visited the premises on 24 August 2017. The LEOs discovered a number of non-compliances including failing to display the Summary of the Premises licence, failing to have the full licence available and failing display a notice under section 57 advising who the premises licence is under the control of. There were also two non-compliances in relation to licence conditions, in respect of a policy for the control of large groups and an age verification policy. All non-compliance issues have subsequently been rectified.
- 1.4 During the visit to the premises, Mr Masum Ahmed told the LEO that he had sold the business a couple of months before, however he was still working at the premises. To date, the Licensing team has not received an application to transfer the licence or to vary the licence to specify a new Designated Premises Supervisor (DPS).

## **2. Review Application**

- 2.1 The application for the review of the premises licence was received on 22 August 2017. A copy of the review application is attached at **Appendix C**.
- 2.2 The application for the review relates to the licensing objective for the prevention of crime and disorder. The grounds for the review follow two occasions where the Home Office found people working at the premises who had no right to work in the UK.
- 2.3 The applicant has informed the Licensing team that on 23 March 2017, ten offenders were encountered, resulting in a civil penalty being raised for the sum of £80,000.
- 2.4 The applicant has explained to the Licensing team that the matter involving the offenders encountered in the enforcement visit conducted on 9 August 2017, is still being processed and is under consideration.
- 2.5 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. In effect this conveys the role of responsible authority to Home Office Immigration Enforcement who exercises the powers on the Secretary of State's behalf. When Immigration Enforcement exercises its powers as a responsible authority it will do so in respect of the prevention of crime and disorder licensing objective because it is concerned with the prevention of illegal working or immigration offences more broadly.
- 2.6 The applicant copied the review application to the licence holder and the responsible authorities as required by the Act. The notice of review was displayed at the premises between 26 August 2017 and 23 September 2017



and in the reception area of the Council Offices as well as the Council's website. No representations were received as a result of this statutory process.

### **3. Licensing Policy**

- 3.1 The Council's Statement of Licensing Policy has not been updated since the Immigration Act 2016 came into effect in April 2017. This is due to be revised in 2018 at which time the policy will reflect changes to the law in respect of immigration matters.

### **4. National Guidance**

- 4.1 The relevant sections from the National Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 on determination of a Review can be found below in relation to Reviews arising in connection with crime:
- 4.2 Guidance note 11.24: "The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective."
- 4.3 Guidance note 11.27: "There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously." This list includes "employing a person who is disqualified from that work by reason of their immigration status in the UK."
- 4.4 Guidance note 11.28: "It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, 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 further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered."

### **5. Making a decision**

- 5.1 In making its decision the Sub-Committee must promote the licensing objectives only, taking into account National Guidance and Spelthorne's Statement of Licensing Policy.
- 5.2 The Sub-Committee must give reasons for its decision.
- 5.3 It is only where additional and supplementary measures are appropriate to promote the licensing objectives that there will be a requirement for appropriate, proportionate conditions to be attached.
- 5.4 Conditions on licences must:
- be precise and enforceable;
  - be unambiguous;
  - not duplicate other statutory provisions;
  - be clear in what they intend to achieve; and,
  - be appropriate, proportionate and justifiable.

**Appendices:**

**Appendix A – Location Plan**

**Appendix B – Current Licence**

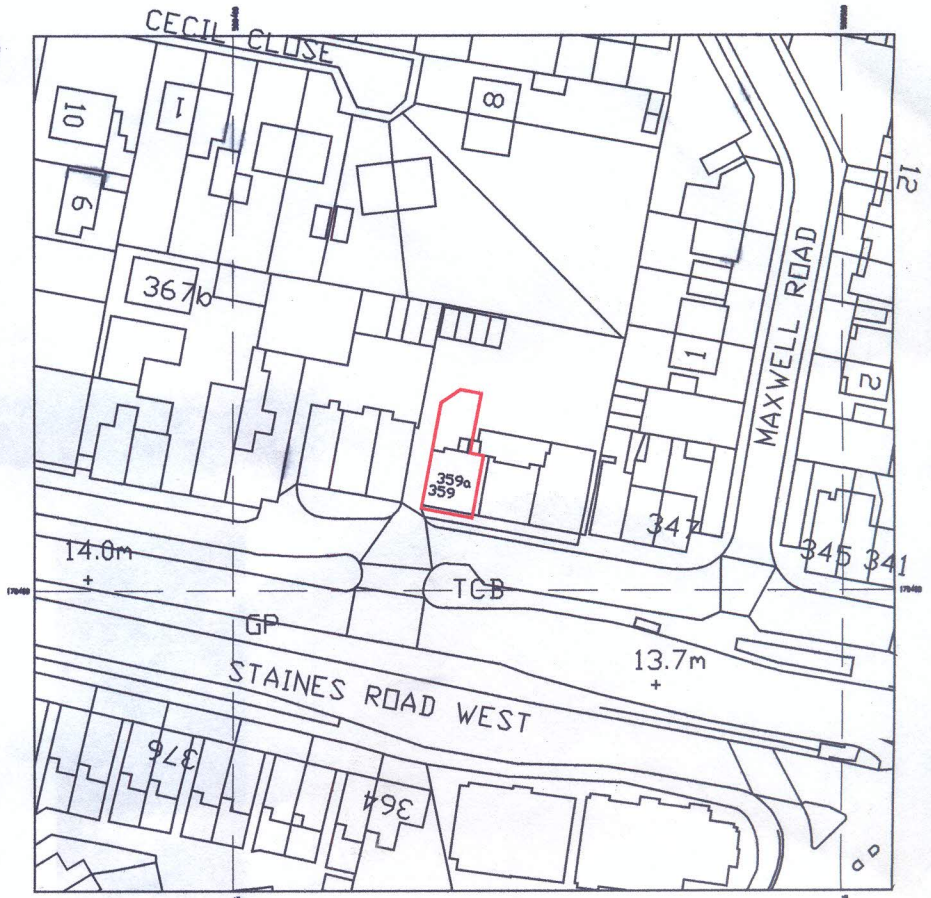
**Appendix C – Review Application**

**Appendix D – Extract from National Guidance on Reviews**

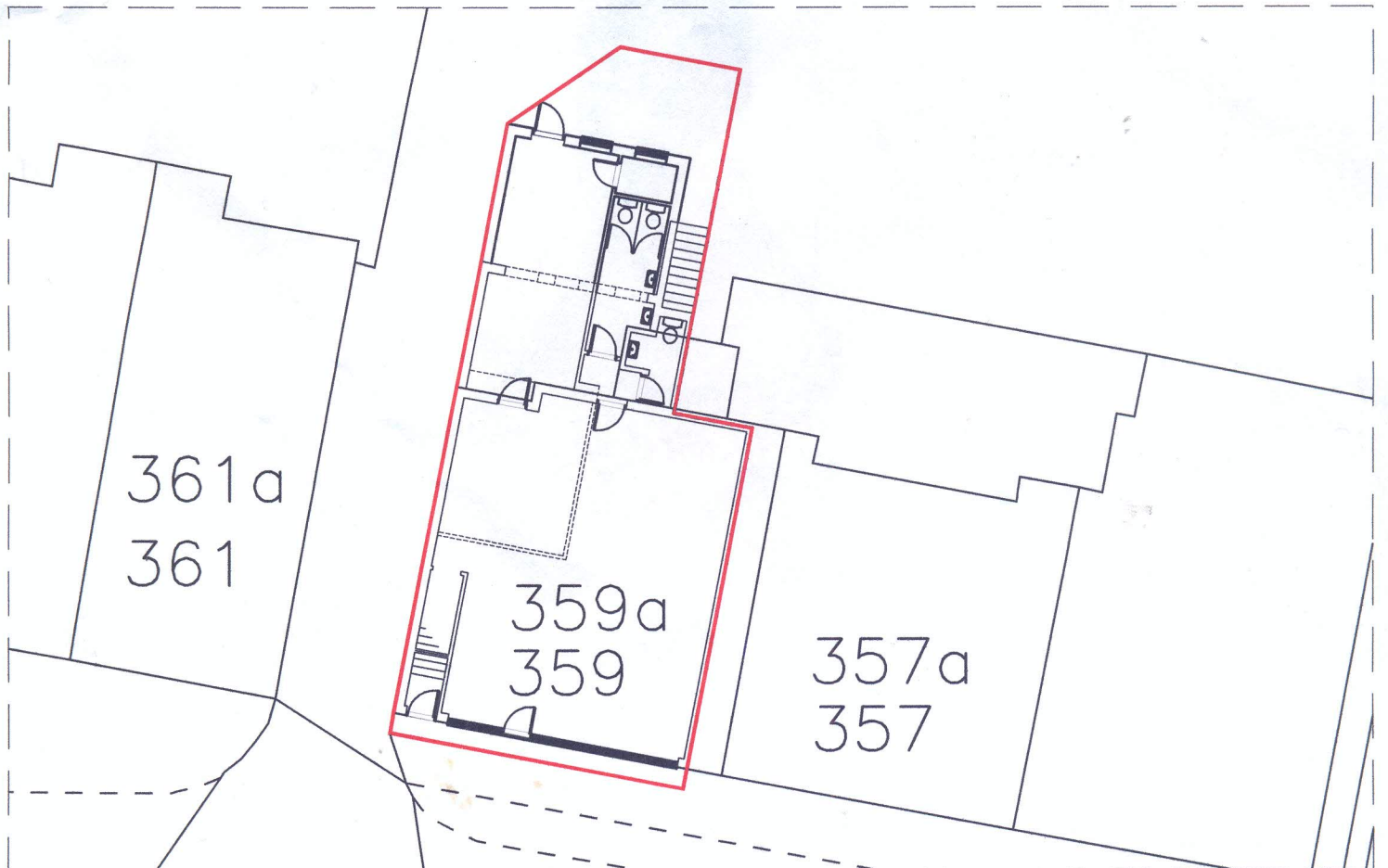
**Appendix E - Guidance for Licensing Authorities to Prevent Illegal Working in  
Licensed Premises in England and Wales**

# 359 Staines Road West, Ashford,

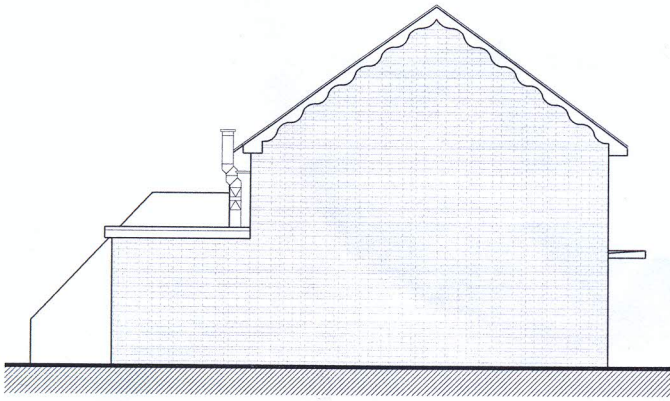
## Middx., TW15 1RP



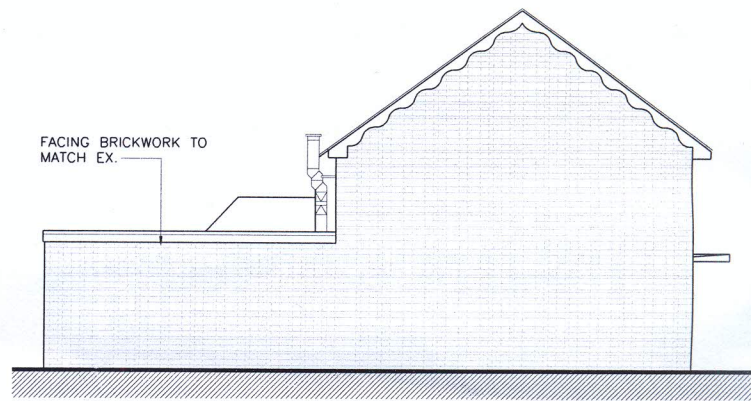
**Location Plan** 1:1250



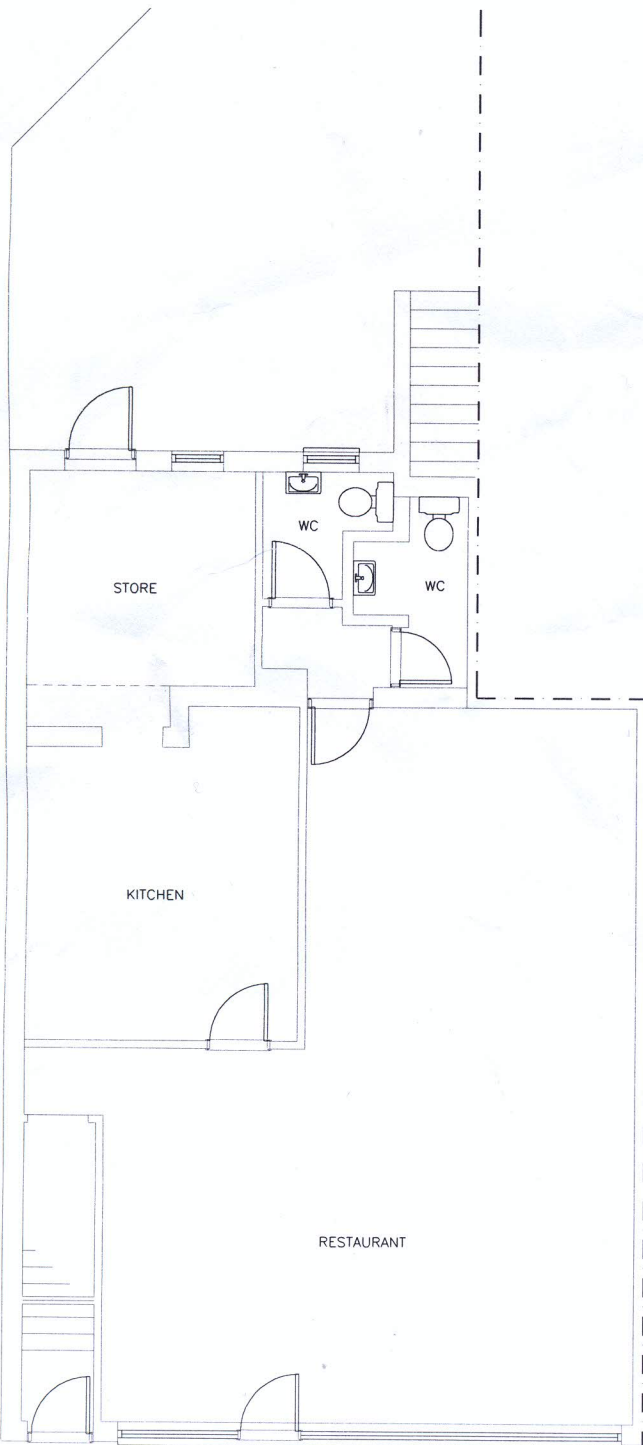
**Site Plan** 1:200



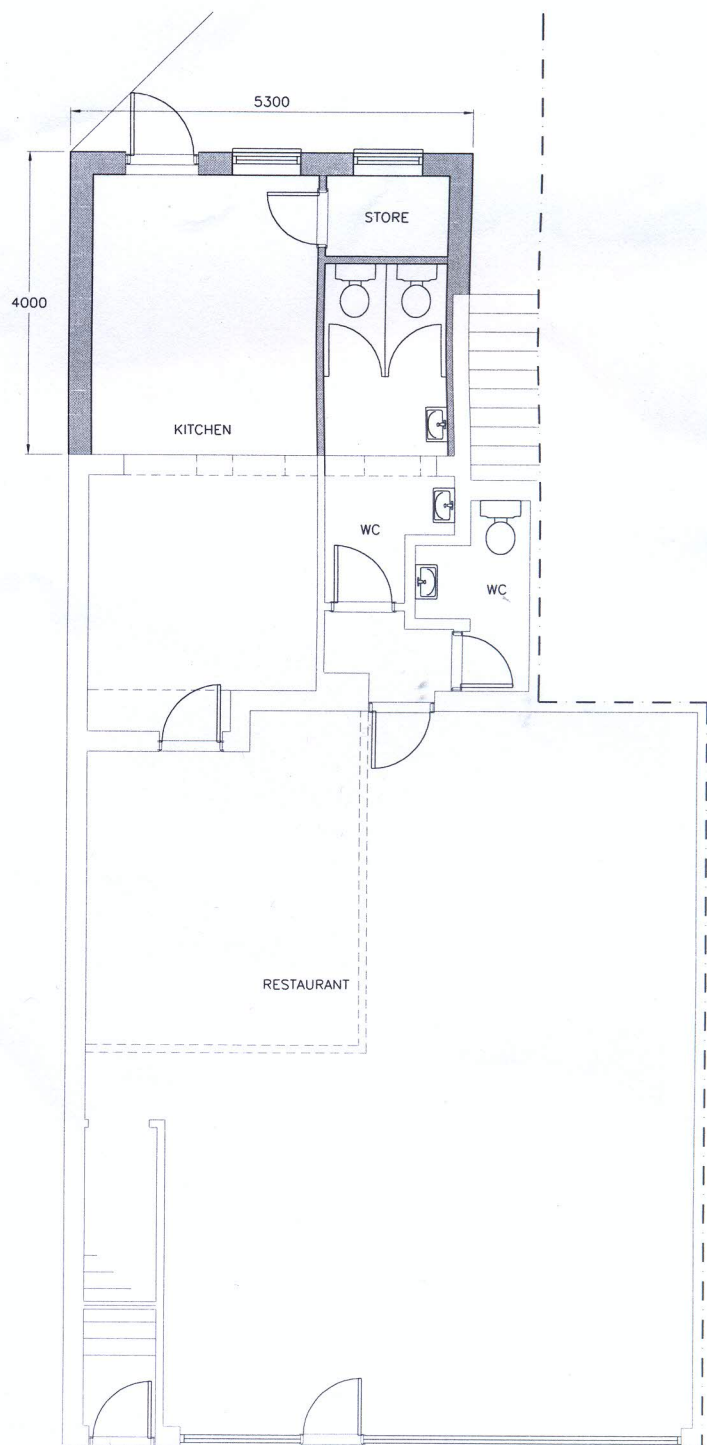
EXISTING SIDE ELEVATION



PROPOSED SIDE ELEVATION



EXISTING GROUND FLOOR



PROPOSED GROUND FLOOR





**PREMISES LICENCE**

<b>Premises licence number</b> 07/00177/LAPRE
<b>Issue Date</b> 14 May 2007
<b>Latest Revision Date</b> 10 October 2011

**Part 1 – Premises details**

<b>Postal address of premises, or if none, ordnance survey map reference or description</b> Indian Ocean 359 Staines Road West			
<b>Post town</b>	Ashford	<b>Post code</b>	TW15 1RP
<b>Telephone number</b>	01784 421414		

<b>Where the licence is time limited the dates</b>
--

<b>Licensable activities authorised by the licence</b> Sale by retail of alcohol Provision of regulated entertainment of live music and entertainment facilities for making music Provision of late night refreshment
--

<b>The times the licence authorises the carrying out of licensable activities</b> Sale by retail of alcohol 12:00 to 14:30 and 17:30 to 23:30 7 days a week Provision of regulated entertainment of live music, and entertainment facilities for making music 19.00 to 23.00, indoors only, no more that 12 times per calendar year Provision of late night refreshment 23.00 to 00.00 (midnight) daily
--

<b>The opening hours of the premises</b> 12:00 to 15.00 17:30 to 00:00 7 days a week
--

<b>Where the licence authorises supplies of alcohol whether these are on and/or off supplies</b> On the premises only
--

**Part 2**

<b>Name, (registered) address, telephone number and e-mail (where relevant) of holder of premises licence</b> Mr Masum Ahmed [home address and telephone number]
--

**Registered number of holder, for example company number, charity number (where applicable)**

**Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol**

Mr Masum Ahmed  
[home address and telephone number]

**Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises the supply of alcohol**

58969 – Luton Borough Council

Signed \_\_\_\_\_

**Deputy Chief Executive**

**Dated** 10 October 2011

**Annex 1 - Mandatory conditions****Mandatory Condition: where a premises licence authorises the supply of alcohol:**

- No supply of alcohol may be made under the Premises licence-
- at a time when there is no designated premises supervisor in respect of the premises licence, or
- at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended
- Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

**The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010**

1. The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children–

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to–  
 (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or  
 (ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);

(c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less;

(d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on–

- (i) the outcome of a race, competition or other event or process, or
- (ii) the likelihood of anything occurring or not occurring;

(e) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.

2. The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

3. The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.

4.

(1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.

(2) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

5. The responsible person shall ensure that–

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures–

- (i) beer or cider: ½ pint;
- (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and

- (iii) still wine in a glass: 125 ml; and
- (b) customers are made aware of the availability of these measures.

## **Annex 2 - Conditions consistent with the Operating Schedule**

### **General**

- A person who holds a recognised licensing qualification shall be on the premises at all times when alcohol is being served
- A policy for the control of large groups shall be in force.

### **The Prevention of Crime and disorder**

- Customers will not be allowed to carry open or sealed bottles or glasses in or out of the premises.

### **Public Safety**

- All exit doors to be kept clear of obstruction
- Adequate supply of first aid equipment will be available on the premises.

### **The Prevention of Public Nuisance**

- No noxious smells to cause a nuisance to nearby properties. Adequate ventilation to be operational on the premises.

### **The Protection of Children from Harm**

- Children under the age of 16 must be accompanied by at least one adult.
- No children under the age of 18 to be served alcohol. Proof of Age scheme to be adhered to.

### **Added to the licence following a variation application in October 2011:**

Live music events are restricted to a maximum of 12 times a calendar year

## **Annex 3 - Conditions attached after a hearing by the licensing authority**

N/A

## **Annex 4 – Plans**

Attached – revised October 2011



Licensing Authority: Spelthorne Borough Council

Address: *Spelthorne Borough Council, Council Offices, Knowle Green, Staines upon Thames,  
TW18 1XB*

Reference: AL0289

**Application for the review of a premises licence or club premises certificate under the  
Licensing Act 2003**

**PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST**

Before completing this form please read the guidance notes at the end of the form.

If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary. You may wish to keep a copy of the completed form for your records.

**I Home Office Immigration Enforcement**

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**apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below**

**Part 1 – Premises or club premises details**

Postal address of premises or, if none, ordnance survey map reference or description 359 Staines Road West	
Post town Ashford	Post code (if known) TW15 1RP

<b>Name of premises licence holder or club holding club premises certificate (if known)</b> Indian Ocean Catering Ltd/ Mr Masum Ahmed
--

<b>Number of premises licence or club premises certificate (if known)</b>
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**Part 2 - Applicant details**

I am

Please tick ✓ yes

1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)

2) a responsible authority (please complete (C) below)

3) a member of the club to which this application relates  
(please complete (A) below)

**(A) DETAILS OF INDIVIDUAL APPLICANT** (fill in as applicable)

Please tick ✓ yes

Mr  Mrs  Miss  Ms  Other title  
(for example, Rev)

**Surname**

**First names**

**I am 18 years old or over**

Please tick ✓ yes

**Current postal  
address if  
different from  
premises  
address**

**Post town**

**Post Code**

**Daytime contact telephone number**

**E-mail address  
(optional)**

**(B) DETAILS OF OTHER APPLICANT**

Name and address

Telephone number (if any)

E-mail address (optional)

**(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT**

Home Office Immigration Enforcement Alcohol Licensing Team Lunar House 40 Wellesley Road Croydon CR9 2BY
Telephone number (if any)
E-mail address (optional) Alcohol@homeoffice.gsi.gov.uk

**This application to review relates to the following licensing objective(s)**

- Please tick one or more boxes ✓
- |   |                                     |
|---|-------------------------------------|
| 1) the prevention of crime and disorder | <input checked="" type="checkbox"/> |
| 2) public safety                        | <input type="checkbox"/>            |
| 3) the prevention of public nuisance    | <input type="checkbox"/>            |
| 4) the protection of children from harm | <input type="checkbox"/>            |

**Please state the ground(s) for review** (please read guidance note 2)

An enforcement visit was conducted on 09/08/2017 at Indian Ocean Restaurant, 359 Staines Road West, Ashford, TW15 1RP

Two males were located at the front of the premises dressed in waiter's clothing and a further six were in the kitchen area.. Both waiters were identified as having no right to work in the UK and were placed on the referral notice. Due to outstanding appeals and applications they were escorted from the premises.

Two of the kitchen employee's were found to have no right to work and so were placed on a illegal working referral notice. One was identified as a Worker in breach of his leave. Due to the outstanding application he was granted temporary release and was escorted from the premises. The second male was identified as an overstayer and was detained pending removal.

All remaining staff were cleared and allowed to return to work. The manager, Masum Ahmed attended and was informed of the correct right to work checks. He claimed he had called in additional staff to assist due to a charity event later that evening. One of the males he stated he called in was previously encountered at the business during a visit in March 2017. 4x offenders encountered in total.

A civil penalty was raised for **£80,000** which has been unpaid and is outstanding

Prior to this visit an enforcement visit was conducted on 23/03/2017. The Premise was contained from the rear and Arrest pair 1 entered to gain fully informed consent from the manager of the restaurant. Initially the manager was hesitant to give consent and stated that he needed to speak to the owner of the premise before he gave consent. A waiter standing close to the manager then rushed over to the kitchen area which was visible from the front, he ushered at the staff to run and three males working in the kitchen area took off their work apparel and proceeded to run out the back of the restaurant. Upon seeing Immigration officers at the rear the 3 males stopped at the rear door and did not exit the premise fully. Officers were instructed to remain at their posts and keep the premise fully contained from the outside. 10 members of staff were encountered at the restaurant, 10 were deemed to be offenders 1 of which had no right to work but did not admit to working in breach and therefore was not served. 9 arrests were made and 7 subjects were initially detained 1 of which was later Temporary Released from Eaton House. The three others encountered at the restaurant were Temporary released at the restaurant. The business owner Masum Ahmed 06.10.1986 was contacted in order for him to come down and close his business premise as no members of staff were allowed to remain at the premise. The owner was happy for me to close his business. I locked the premise from inside and placed the keys to the premise in a foil takeaway bag and left them on the bar area. Officers then exited via the rear door which did not need a key to be secured. Staff members closed down all lights and equipment at the premise. The owner was then notified in regards to where his keys to the address had been placed. The notice to occupier and 2 NOPL's were also left next to the keys on the bar area and the owner was made aware of this.

**Please provide as much information as possible to support the application** (please read guidance note 3)

**Please tick ✓ yes**

Have you made an application for review relating to the premises before

If yes please state the date of that application

Day	Month	Year

**If you have made representations before relating to the premises please state what they were and when you made them**

**Please tick ✓**

yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

**IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.**

**Part 3 – Signatures** (please read guidance note 4)

**Signature of applicant or applicant’s solicitor or other duly authorised agent** (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature

.....

Date 22/08/17

.....

Capacity **Responsible****Authority**.....

.....

<b>Contact name (where not previously given) and postal address for correspondence associated with this application</b> (please read guidance note 6) <b>Alcohol Licensing Team</b> <b>Lunar House</b> <b>40 Wellesley Road</b>		
<table border="1"> <tr> <td><b>Post town</b> Croydon</td> <td><b>Post Code</b> CR9 2BY</td> </tr> </table>	<b>Post town</b> Croydon	<b>Post Code</b> CR9 2BY
<b>Post town</b> Croydon	<b>Post Code</b> CR9 2BY	
<b>Telephone number (if any)</b>		
<b>If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)</b> Alcohol@homeoffice.gsi.gov.uk		

**Notes for Guidance**

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

## **POWERS OF A LICENSING AUTHORITY ON THE DETERMINATION OF A REVIEW - EXTRACT FROM NATIONAL GUIDANCE**

11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.

11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.

11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence.

11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.

11.21 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence

### **Reviews arising in connection with crime**

11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.

11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting



the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.

11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.

11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for employing a person who is disqualified from that work by reason of their immigration status in the UK;
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol.

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, 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 further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.

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# **GUIDANCE FOR LICENSING AUTHORITIES TO PREVENT ILLEGAL WORKING IN LICENSED PREMISES IN ENGLAND AND WALES**

**6 April 2017**

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# 1. Introduction

The Licensing Act 2003 (the 2003 Act) sets out the licensing regime for the sale and supply of alcohol, the provision of entertainment and the provision of late night refreshment in England and Wales. Section 36 of, and Schedule 4 to the Immigration Act 2016 (the 2016 Act) amend the 2003 Act and introduce immigration safeguards in respect of licensing applications made in England or Wales on or after 6 April 2017. The intention is to prevent illegal working in premises licensed for the sale of alcohol or late night refreshment.

The statutory prevention of crime objective in the 2003 Act includes the prevention of immigration crime and the prevention of illegal working in licensed premises. Licensing authorities should work with the Home Office (Immigration Enforcement) as well as the police, in respect of these matters.

## 1.1 Summary of the immigration measures

Section 36 of, and Schedule 4 to the Immigration Act 2016 (the 2016 Act) amend the 2003 Act to provide that in England and Wales:

- Premises licences to sell alcohol or provide late night refreshment and personal licences cannot be issued to an individual who does not have permission to be in the UK, or is not entitled to undertake work relating to the carrying on of a licensable activity;
- Licences issued to those with limited permission to be in the UK will lapse when their permission to be in the UK and work in a licensable activity comes to an end;
- Immigration offences, including civil penalties, become 'relevant offences' as defined by the 2003 Act;
- The Home Secretary (in practice Home Office (Immigration Enforcement)) is added to the list of responsible authorities in the licensing regime, which requires Home Office (Immigration Enforcement) to receive premises licence applications (except regulated entertainment only licences), and in some limited circumstances personal licence applications, and permits Home Office (Immigration Enforcement) to make appropriate representations and objections to the grant of a licence; and
- 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 licensable activity.

Section 36 enables similar provision to be made by regulations in the licensing regimes of Scotland and Northern Ireland. These are expected to come into force later in 2017.

## 1.2 Purpose of this guidance

This guidance is issued for use by licensing authorities in England and Wales. Equivalent guidance will be issued for the relevant licence issuing bodies in Scotland and Northern Ireland when the measures are implemented there.

It sets out what the immigration amendments to the 2003 Act mean for licensing authorities and the Home Office (Immigration Enforcement), which are, in summary:

- **Licensing authorities** are under a duty not to issue licences to individuals who do not have the required immigration permission to work in a licensable activity.
- **Home Office (Immigration Enforcement)** will undertake the role of a 'responsible authority' as defined in the 2003 Act. It will also use the power of entry under section 179 of the 2003 Act to investigate illegal working in premises engaged in licensable activities, working closely with licensing enforcement officers and the police.

## 1.3 For whom is this guidance relevant?

This guidance should be used by licensing authority staff responsible for the issue, suspension and revocation of premises licences for the sale of alcohol or late night refreshment, and personal licences.

This guidance applies to applications sent to licensing authorities on or after 6 April 2017.

The checking requirements are not retrospective. Licensing authorities do not have to check the immigration status of those people who already hold a licence which was issued before 6 April 2017, or who sent their licence application to the licensing authority before this date (even if a decision has not been made). A postmark may be taken as acceptable evidence of the date of application.

## 1.4 How should this guidance be used?

The guidance sets out what licensing authorities need to know about their legal duty not to issue a licence to a person who is not permitted to hold one because of their immigration status. It sets out how licensing authorities should discharge this duty by conducting document checks, and on whom. It also explains the role of Home Office (Immigration Enforcement) in promoting the prevention of crime and disorder in licensed premises, including immigration crime and illegal working.

This guidance supplements the statutory guidance issued under section 182 of the Licensing Act 2003<sup>1</sup>.

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<sup>1</sup> <https://www.gov.uk/government/publications/section-182-of-the-licensing-act-2003-amended-guidance>

## 1.5 Types of licences affected by the provisions

The provisions apply to premises licences for alcohol and late night refreshment, (but not entertainment only licences) and personal licences. Other types of authorisation under the 2003 Act (club premises certificate and temporary event notices (TEN)) are not covered. This is because there is little evidence of immigration abuse in respect of premises authorised under club premises certificates, and it would have been disproportionate to apply the requirements to TENs.

## 2. Entitlement to work

### 2.1 What does entitlement to work in a licensable activity mean?

For an application<sup>2</sup> 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 are living in the UK, they must be entitled to be in the UK and to work in a licensable activity. Applicants who are not living in the UK are not required to be eligible to work in the UK to hold a personal or premises licence.

For the purpose of these provisions, an individual is disqualified from applying for a personal or premises licence if:

- (a) the individual requires leave (immigration permission) to enter or remain in the UK and has not been granted it, or
- (b) the individual has been granted such leave and the leave -
  - is invalid,
  - has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time, or otherwise), or
  - is subject to a condition preventing the person from doing work relating to the carrying on of a licensable activity.

For applications made on or after 6 April 2017, a licensing authority must not issue a premises or personal licence to someone who ordinarily lives in the UK and who is not entitled to work in a licensable activity. An application made by an individual without the entitlement to work in the UK is invalid and must be rejected.

In order to discharge their duty from 6 April 2017, licensing authorities must be satisfied that an applicant has the right to work in the UK and should require applicants to submit a copy of one of the documents listed at [Annex A](#) to show that the applicant has permission to be in the UK and to undertake work in a licensable activity. The purpose is to prevent illegal working in the UK.

The requirements to demonstrate immigration status are not retrospective. This means that a licensing authority does not need to check the immigration status of those individuals who already hold a licence which was issued before 6 April 2017, or who had applied for their licence before this date.

### 2.2 Immigration information as part of the application

The licence application forms have been amended to contain a list of documents that licence applicants should provide so that the licensing authority has the information

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<sup>2</sup> Refers to an application made by an individual, including partnerships where there is a joint and several liability between partnership individuals



necessary for the introduction of immigration checks as part of the licensing regime<sup>3</sup> with effect from 6 April 2017.

For applications made on or after this date, the applicant must provide their date of birth, their nationality and the address where they are ordinarily resident. Evidence of their entitlement to work in the UK should also accompany their application. The form includes a list of documents and a copy of one or more of these documents should be provided, as part of their application. These documents which demonstrate their 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 prescribed document lists for checks undertaken by employers<sup>4</sup>.

The licence application forms make it clear that it is an offence to work illegally in the UK, and to employ individuals who do not have an entitlement to work. It also makes clear that an individual is not entitled to 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 will become invalid if the individual to whom it has been granted ceases to be entitled to live and work in the UK.

Applicants may provide clear photocopies or scanned copies of documents, which can either be in black and white or colour, and do not need to be endorsed as a copy of the original. Applicants should not be encouraged or required by licensing authorities to submit original documents<sup>5</sup>. The licensing authority must be satisfied that the applicant is entitled to work in the UK, but the licensing authority is not required to check the validity of the document submitted by the applicant to demonstrate the right to work, or physically compare the photograph with the applicant in person. The licensing authority should establish whether or not an individual has a lawful immigration status in the UK or is prohibited from working because they are in the UK illegally or subject to a condition that prevents them from working in a licensable activity.

Where there is sufficient evidence from the application form and accompanying document copies that the applicant is not living in the UK, there is no requirement for the applicant to have an entitlement to work in the UK.

The application form includes a clear warning about the requirement to be entitled to work in the UK. 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 with a fine of any amount.

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<sup>3</sup> The Licensing Act 2003 (Miscellaneous Amendments) Regulations 2017:  
<http://www.legislation.gov.uk/2017?title=licensing%20act%202003%20%28miscellaneous%20amendments%29%20regulations>

<sup>4</sup> Acceptable documents for right to work checks are set out in the following regulations: The Immigration (Restrictions on Employment) Order 2007 and the Immigration (Restrictions on Employment) (Codes of Practice and Amendment) Order 2014.

<sup>5</sup> Copy documents are accepted because this is in line with the existing licensing regime which allows online applications and scanned documents.

## 2.3 Ensuring equal treatment

To ensure that licensing authorities do not discriminate against anyone, all licence applicants should be treated in the same way during the licence application process, including British citizens. This will also demonstrate a fair, transparent and consistent application process. Assumptions should not be made about a person's right to work in the UK or their immigration status on the basis of their nationality, ethnic origin, accent, the colour of their skin, or the length of time they have been living in the UK.

## 2.4 Licensing authority assessment of entitlement to work

It is the responsibility of the licensing authority to be satisfied that an individual's immigration status does not preclude them from holding a premises or personal licence to sell alcohol or late night refreshment.

In most cases, the licensing authority should be able to make the assessment that the applicant is entitled to work and is not disqualified from applying for a premises or personal licence. They will make this assessment on the basis of the information provided with the application, including the copy documents supplied.

In all cases where the licensing authority is satisfied that the applicant is a British citizen, they will be able to make the assessment that the applicant meets the 'entitlement to work' criteria.

Applicants are not required to provide original documents, and licensing authorities should not request them. Clear photocopies or scanned copies of documents are sufficient. The licensing authority will retain the document copies in accordance with its existing procedures for retaining licence applications.

The licensing authority is not assessing the validity of the document, or required to physically compare the photograph with the applicant in person. When the applicant is living in the UK, the licensing authority must be satisfied that the applicant has a lawful immigration status in the UK, and that they are not prohibited from working because they are in the UK illegally, or because, whilst they are here legally, they are subject to a condition that prevents them from working in a licensable activity.

The licensing authority must make checks on all individuals who apply for a licence. This includes partnerships where there is joint and several liability between the partnership individuals. Checks do not need to be made on those applying for a premises licence pursuant to a function or on behalf of an organisation listed in section 16(1)(b) – (h) of the 2003 Act.

## 2.5 Checking with the Home Office

An immigration status check may be made by the licensing authority contacting the Home Office's Status, Verification, Evidence and Checking (SVEC) Unit – formerly called the Evidence and Enquiry Unit, using a standard pro-forma. This service is exactly the same as the existing service available to licensing authorities conducting checks in relation to taxi and private hire vehicle licensing. Local Partnership Managers will provide licensing authorities with the contact details and the pro-forma for the SVEC Unit. The Unit will send a response to an enquiry within 10 working days.

It will only be necessary to contact the Home Office in the following circumstances to verify that someone has the right to hold a premises or personal licence:

- (i) the applicant provides a copy of a Certificate of Application which is less than six months old and indicates that work is permitted; or
- (ii) the applicant has provided reasonable evidence that they have an outstanding application for permission to remain in the UK with the Home Office which was made before their previous immigration leave expired, such as a Home Office acknowledgement letter or proof of postage or reasonable evidence that they have an appeal or administrative review pending against the Home Office decision, such as a reference number.

In these two circumstances the SVEC Unit will confirm the individual's immigration status, in order that the licensing authority may decide whether the applicant is entitled to a licence.

Assistance on this process may be obtained from Home Office Local Partnership Managers, or by email [I&SDLPMSsupportTeam@homeoffice.gsi.gov.uk](mailto:I&SDLPMSsupportTeam@homeoffice.gsi.gov.uk). In most circumstances, a Local Partnership Manager or local Immigration, Compliance and Enforcement (ICE) team will be the first point of contact for licensing authorities.

The application form makes clear that documentary evidence of immigration status should accompany the application. The list of documents is contained in the form. In the event that this documentary evidence is absent, the licensing authority may wish to contact the applicant to request this information, in accordance with its usual procedures. In the event that the requested information is not provided, the licensing authority should determine that the immigration requirements have not been met and reject the application.

## **2.6 Time-limited immigration permission to work**

Where an applicant's permission to work in the UK is time-limited, the licensing authority may issue a licence for an indefinite period, but the licence will become invalid when the immigration permission expires. This is set out in the licence application forms. The individual's entitlement to work in the UK may be extended or made permanent by the Home Office, and granting the licence for an indefinite period prevents the licensee from having to re-apply for a new licence. In the event that the Home Office cuts short or ends a person's immigration permission (referred to a curtailment or revocation), any licence issued further to an application made on or after 6 April 2017 will automatically lapse. The licensing authority is under no duty to carry out on-going immigration checks to see whether a licence holder's permission to be in the UK has been brought to an end.

Home Office (Immigration Enforcement) will seek to inform the licensing authority of any individual whose immigration permission has been curtailed or revoked, so that the licensing authority can take any necessary action. Such a person may apply to transfer the licence to another person. That person must not be disqualified by their immigration status. Home Office (Immigration Enforcement) will receive a copy of that transfer application.

## 3. Home Office as a responsible authority

The Immigration Act 2016 makes 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. In effect this conveys the role of responsible authority to Home Office (Immigration Enforcement) who exercises the powers on the Secretary of State's behalf.

When Home Office (Immigration Enforcement) exercises its powers as a responsible authority, it will do so in respect of the prevention of crime and disorder licensing objective because it is concerned with the prevention of immigration crime in connection with licensed premises.

In addition to its function as a responsible authority in respect of premises licences, Home Office (Immigration Enforcement) has a similar role to the police in respect of its ability to intervene in respect of personal licences.

Licence applications for alcohol and late night refreshment submitted on or after 6 April 2017 must be sent to the Home Office (Immigration Enforcement).

### 3.1 Home Office contact details

Home Office (Immigration Enforcement) has established a central team to handle the receipt of licence applications.

Postal licence applications will be copied by the applicant to Home Office (Immigration Enforcement) as a responsible authority in the usual way. The licensing authority should add Home Office (Immigration Enforcement) to its existing list of responsible authorities and provide the following address on its website. This will also feature on gov.uk:

**Alcohol Licensing Team  
Lunar House  
40 Wellesley Road  
Croydon  
CR9 2BY**

Email licence applications will be forwarded by the licensing authority to Home Office (Immigration Enforcement) as a responsible authority:

**[Alcohol@homeoffice.gsi.gov.uk](mailto:Alcohol@homeoffice.gsi.gov.uk)**

### 3.2 Licence applications to be sent to Home Office (Immigration Enforcement)

Home Office (Immigration Enforcement) will receive notification of the following:

- (i) **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<sup>6</sup>
- all applications to vary a premises licence
- applications for minor variations considered by the licensing authority to require consultation with Home Office (Immigration Enforcement)
- all interim authority notices.

### **Personal licences for the sale of alcohol**

- all personal licence applications which include a declaration of an unspent conviction for a relevant offence or a foreign offence, as set out in Schedule 4 of the 2003 Act and all personal licence applications which declare a civil immigration penalty.

### **3.3 What are ‘relevant offences’?**

Relevant offences are defined within the 2003 Act. Further to amendments introduced by the Immigration Act 2016, they now specifically include immigration offences. Civil penalties received for immigration matters are treated in the same way as relevant offences.

Licensing authorities are required to notify Home Office (Immigration Enforcement) when an applicant declares that they have been required to pay an immigration penalty or convicted of an immigration offence, or a foreign offence comparable to an immigration offence. The Home Office 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.

As with objections from the police, the applicant is entitled to a hearing if the Home Office (Immigration Enforcement) objects to the application on the grounds of the prevention of illegal working where the applicant has an unspent conviction for a relevant immigration offence received on or after 6 April 2017, or has been required to pay an immigration penalty on or after 6 April 2017<sup>7</sup>. If the police or Home Office (Immigration Enforcement) do not issue an objection notice and the application otherwise meets the requirements of the 2003 Act, the licensing authority must grant it.

### **3.4 Home Office (Immigration Enforcement) consideration**

Home Office (Immigration Enforcement) will be acting as a responsible authority under the prevention of crime and disorder licensing objective, which includes preventing immigration crime in respect of premises licences (except for regulated entertainment only).

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<sup>6</sup> Home Office (Immigration Enforcement) 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.

<sup>7</sup> Offences and civil immigration penalties added to the list of relevant offences with effect from 6 April 2017 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 after this date.

It will consider whether there are immigration offences or penalties – for example for the employment of illegal workers, which lead it to believe that to grant a licence in the circumstances, is likely to be prejudicial to the prevention of immigration crime.

The central team will not consider the applicant's immigration status, as this will be considered by the licensing authority.

Home Office (Immigration Enforcement) will take into account the following:

Whether the applicant:

- (i) 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); or
- (ii) has, during the last three years ending on the date of the licence application, been required to pay a penalty under section 15 of the 2006 Act; or
- (iii) has, at any time, been required to pay such a penalty and failed to pay; or
- (iv) has been convicted of an offence under any of the Immigration Acts.

If appropriate, Home Office (Immigration Enforcement) will consider whether to request that conditions be attached to the licence. This will be the case where the conditions are considered appropriate to promote the licensing objective of preventing crime and disorder, including immigration crime and illegal working in licensed premises.

Conditions that are considered appropriate for the prevention of illegal working in licensed premises may include mandating a premises licence holder to undertake right to work checks on all staff employed at the licensed premises, and requiring that a physical copy of any document checked as part of a right to work check is retained at the licensed premises, or a digital copy be immediately accessible from the premises.

### **3.5 Home Office (Immigration Enforcement) representations**

In the event that Home Office (Immigration Enforcement) considers it appropriate to make representations in the case of a premises licence application or to object to the grant of a personal licence, it will do so by email and using a standard form.

Home Office (Immigration Enforcement) will not submit a response to the relevant licensing authority where it does not wish to intervene in an application.

### **3.6 Licensing hearings and appeals**

Home Office (Immigration Enforcement) 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 central team will be the point of contact for licensing authorities at any point before a hearing. At a hearing, Home Office (Immigration Enforcement) will usually be represented by a member of an Immigration, Compliance and Enforcement 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 Home Office (Immigration Enforcement) of the outcome of applications in which it has submitted representations.

When appeals are made to a magistrates' court against a decision of a licensing authority, the 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.

Home Office (Immigration Enforcement), in common with other responsible authorities, may appeal against a decision about the grant or variation of a licence where it has objected or made representations.



## 4. Ending a licence

### 4.1 Request for a review on immigration grounds

Home Office (Immigration Enforcement) may request that a licensing authority reviews an existing licence where it has concerns relating to the licensing objective of preventing crime and disorder, including immigration crime and preventing illegal working in licensed premises. This can include licences issued further to an application made before 6 April 2017.

Such a request is likely to follow:

- (i) an enforcement operation or instance of data sharing that identifies an offence under any of the Immigration Acts is suspected of being committed in connection with the carrying on of the licensable activity and/or a breach of the immigration conditions on the licence<sup>8</sup>; or
- (ii) the issue of a civil penalty which is not cancelled following an objection or appeal: or
- (iii) the identification of a licence holder whose immigration status no longer permits them to work in the UK and whose licence was issued before 6 April (and therefore does not lapse automatically) (see below).

In the case of (iii), disqualification by reason of immigration status, this course of action is relevant where a licence was issued further to an application made before 6 April 2017, as these licences will not automatically lapse when the licence holder no longer has lawful status – see 4.3 below. The onus will be on Home Office (Immigration Enforcement) to inform the relevant licensing authority and request a review of the licence.

When reviewing a licence, the licensing authority will take action that is appropriate to ensure the promotion of the crime prevention objective which may include the prevention of illegal working in the licensed premises. It is envisaged that licensing authorities, the police, Home Office (Immigration Enforcement) and other law enforcement agencies will use the review procedures effectively to deter illegal working and crime.

Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, including immigration crime, the licensing authority may consider revocation of the licence – even in the first instance. This includes where the licence holder ordinarily lives in the UK and does not have immigration permission to be in the UK and to undertake a licensable activity. Paragraph 11.27 of the statutory guidance issued

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<sup>8</sup> Offences and civil immigration penalties added to the list of relevant offences with effect from 6 April 2017 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.



under section 182 of the Licensing Act 2003 includes illegal working as an example of criminal activity that should be considered particularly seriously.

## 4.2 Review following notification of a compliance order

In addition, the licensing authority must 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 of the Immigration Act 2016.

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 ten working days, the first of which is the day after the day the notice from the magistrates' court is received; and
- notice of the hearing must be given no later than five working days before the first hearing day (there must be five clear working days between the giving of the notice and the start of the hearing).

## 4.3 Where a licence lapses

A personal licence is always granted for an indefinite duration, and a premises licence will generally run indefinitely. However, it will lapse if the holder of the licence (who is an individual living in the UK) that was granted in respect of an application which was made on or after 6 April 2017 ceases to be entitled to work in the UK. This could be because their permission to be in the UK has time-expired or because the Home Office has brought it to an end (for example, the Home Office has curtailed their permission to live and work in the UK).

The licensing authority is not under a duty to carry out on-going immigration checks to see whether a licence holder's permission to be in the UK has been brought to an end. Similarly, the amended 2003 Act does not place a duty on the licensing authority to withdraw or revoke the licence if this occurs, however, it should take appropriate action where it is informed that a licence holder's permission to be in the UK has been brought to an end. 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 or revoked. If the individual is subsequently granted permission to work in the UK and wishes to once again hold a licence, they must make an application for a new licence.

Home Office (Immigration Enforcement) 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 appropriate action. Such a person may apply 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.

## 5. 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 so that 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.

Immigration officers, like 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.

## Annex A

### List of acceptable documents to show entitlement to work

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 licensable activity. They do this by providing with their application, copies or scanned copies of the following documents (which do not need to be certified):-

- 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 or a citizen of the UK and Colonies having the right of abode in the UK. See note below about which sections of the passport must be provided.
- 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 an 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 relating 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 an European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights of 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 an 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 an 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:
  - (i) working e.g. employment contract, wage slips, letter from the employer,
  - (ii) self-employed e.g. contracts, invoices, or audited accounts with a bank,
  - (iii) studying e.g. letter from the school, college or university and evidence of sufficient funds, or
  - (iv) self-sufficient e.g. bank statements.

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 insurance policy, an EHIC card or an S1, S2 or S3 form.

**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:-

- (i) any page containing the holder's personal details including nationality;
- (ii) any page containing the holder's photograph;
- (iii) any page containing the holder's signature;
- (iv) any page containing the date of expiry; and
- (v) 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.

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