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SCHEDULES

VALID FROM 01/12/2016

SCHEDULE 6

Section 38

ILLEGAL WORKING CLOSURE NOTICES AND ILLEGAL WORKING COMPLIANCE ORDERS

Illegal working closure notices

- 1 (1) An immigration officer of at least the rank of chief immigration officer may issue an illegal working closure notice in respect of premises if satisfied on reasonable grounds that the conditions in sub-paragraphs (3) and (6) are met.
- (2) An illegal working closure notice is a notice which prohibits, for a period specified in the notice—
- (a) access to the premises other than by a person who habitually lives on the premises, except where authorised in writing by an immigration officer;
 - (b) paid or voluntary work being performed on the premises, except where so authorised.
- (3) The condition in this sub-paragraph is that an employer operating at the premises is employing a person over the age of 16 and subject to immigration control—
- (a) who has not been granted leave to enter or remain in the United Kingdom, or
 - (b) whose leave to enter or remain in the United Kingdom—
 - (i) is invalid,
 - (ii) has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), or
 - (iii) is subject to a condition preventing the person from accepting the employment.
- (4) Where a person is on immigration bail within the meaning of Part 1 of Schedule 10—
- (a) the person is to be treated for the purposes of sub-paragraph (3) as if the person had been granted leave to enter the United Kingdom, but
 - (b) any condition as to the person's work in the United Kingdom to which the person's immigration bail is subject is to be treated for those purposes as a condition of leave.
- (5) A person falling within sub-paragraph (3) is referred to in this Schedule as an “illegal worker”.
- (6) The condition in this sub-paragraph is that the employer, or a connected person in relation to the employer—
- (a) has been convicted of an offence under section 21 of the Immigration, Asylum and Nationality Act 2006 (“the 2006 Act”),

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- (b) has, during the period of three years ending with the date on which the illegal working closure notice is issued, been required to pay a penalty under section 15 of the 2006 Act, or
 - (c) has at any time been required to pay such a penalty and failed to pay it.
- (7) Sub-paragraph (6)(a) does not apply in relation to a conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974 or the Rehabilitation of Offenders (Northern Ireland) Order 1978 (S.I. 1978/1908 (N.I. 27)).
- (8) For the purposes of sub-paragraph (6)(b) and (c)—
- (a) 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 the penalty if—
 - (i) the person is excused payment by virtue of section 15(3) of that Act, or
 - (ii) the penalty is cancelled by virtue of section 16 or 17 of that Act;
 - (b) a person to whom such a notice has been given is not to be treated as having been required to pay the penalty until such time as—
 - (i) the period for giving a notice of objection under section 16 of the 2006 Act has expired and the Secretary of State has considered any notice given within that period, and
 - (ii) 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.
- (9) For the purposes of sub-paragraph (6), a person is a connected person in relation to an employer if—
- (a) where the employer is a body corporate, the person is—
 - (i) a director, manager or secretary of the body corporate,
 - (ii) purporting to act as a director, manager or secretary of the body corporate, or
 - (iii) if the affairs of the body corporate are managed by its members, a member of the body corporate;
 - (b) where the employer is a partnership (whether or not a limited partnership), the person is a partner or purporting to act as a partner;
 - (c) where the employer is an individual, the person is—
 - (i) a body corporate of which the individual has at any time been a director, manager or secretary,
 - (ii) a body corporate in relation to which the individual has at any time purported to act as a director, manager or secretary,
 - (iii) a body corporate whose affairs are managed by its members and the individual has at any time been a member of the body corporate,
 - (iv) a partnership (whether or not a limited partnership) in which the individual has at any time been a partner or in relation to which the individual has at any time purported to act as a partner.
- (10) An illegal working closure notice may not be issued if the employer shows in relation to the employment of each illegal worker that if a penalty notice were

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given under section 15 of the 2006 Act the employer would be excused under subsection (3) of that section from paying the penalty.

(11) An illegal working closure notice may be issued only if reasonable efforts have been made to inform—

- (a) people who live on the premises (whether habitually or not), and
- (b) any person who has an interest in the premises,

that the notice is going to be issued.

(12) Before issuing an illegal working closure notice the immigration officer must ensure that any person the officer thinks appropriate has been consulted.

(13) The Secretary of State may by regulations amend sub-paragraph (1) to change the rank specified in that sub-paragraph.

2 (1) An illegal working closure notice must—

- (a) identify the premises;
- (b) explain the effect of the notice;
- (c) state that failure to comply with the notice is an offence;
- (d) state that an application will be made under paragraph 5 for an illegal working compliance order;
- (e) specify when and where the application will be heard;
- (f) explain the effect of an illegal working compliance order.

(2) The maximum period that may be specified in an illegal working closure notice is 24 hours unless sub-paragraph (3) applies.

(3) The maximum period is 48 hours if the notice is issued by an immigration officer of at least the rank of immigration inspector.

(4) In calculating when the period of 48 hours ends, Christmas Day is to be disregarded.

(5) The period specified in an illegal working closure notice to which sub-paragraph (3) does not apply may be extended by up to 24 hours if an extension notice is issued by an officer of at least the rank of immigration inspector.

(6) An extension notice is a notice which—

- (a) identifies the illegal working closure notice to which it relates, and
- (b) specifies the period of the extension.

(7) The Secretary of State may by regulations amend sub-paragraph (3) or sub-paragraph (5) to change the rank specified in that sub-paragraph.

Cancellation of illegal working closure notices

3 (1) An immigration officer may by the issue of a cancellation notice cancel an illegal working closure notice if—

- (a) the immigration officer considers that the condition in paragraph 1(3) or (6) is not met, or
- (b) the employer shows in relation to the employment of each illegal worker that if a penalty notice were given under section 15 of the 2006 Act the employer would be excused under subsection (3) of that section from paying the penalty.

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- (2) A cancellation notice may be issued only—
- (a) by an immigration officer of at least the rank of the immigration officer who issued the illegal working closure notice, or
 - (b) where the illegal working closure notice has been extended by an extension notice, by an immigration officer of at least the rank of the immigration officer who issued the extension notice.

Service of notices

- 4 (1) A notice under paragraph 1, 2 or 3 must be served by an immigration officer.
- (2) The immigration officer must if possible—
- (a) fix a copy of the notice to at least one prominent place on the premises,
 - (b) fix a copy of the notice to each normal means of access to the premises,
 - (c) fix a copy of the notice to any outbuildings that appear to the immigration officer to be used with or as part of the premises,
 - (d) give a copy of the notice to at least one person who appears to the immigration officer to have control of or responsibility for the premises,
 - (e) give a copy of the notice to the people who live on the premises and to any person who does not live there but was informed (under paragraph 1(11)) that the notice was going to be issued.
- (3) If the immigration officer reasonably believes, at the time of serving the notice, that there are persons occupying another part of the building or other structure in which the premises are situated whose access to that part will be impeded if an illegal working compliance order is made under paragraph 5, the immigration officer must also if possible serve the notice on those persons.
- (4) The immigration officer may enter any premises, using reasonable force if necessary, for the purposes of complying with sub-paragraph (2)(a).

Illegal working compliance orders

- 5 (1) Whenever an illegal working closure notice is issued an application must be made to the court for an illegal working compliance order (unless the notice has been cancelled under paragraph 3).
- (2) An application for an illegal working compliance order must be made by an immigration officer.
- (3) The application must be heard by the court not later than 48 hours after service of the illegal working closure notice.
- (4) In calculating when the period of 48 hours ends, Christmas Day is to be disregarded.
- (5) The court may make an illegal working compliance order in respect of premises if it is satisfied, on the balance of probabilities—
- (a) that the conditions in paragraph 1(3) and (6) are met, and
 - (b) that it is necessary to make the illegal working compliance order to prevent an employer operating at the premises from employing an illegal worker.
- (6) An illegal working compliance order may—
- (a) prohibit or restrict access to the premises;

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- (b) require a person specified in the order to carry out, at such times as may be so specified, such checks relating to the right to work as may be prescribed by the Secretary of State in regulations;
 - (c) require a person specified in the order to produce to an immigration officer, at such times and such places as may be so specified, such documents relating to the right to work as may be prescribed by the Secretary of State in regulations;
 - (d) specify the times at which and the circumstances in which an immigration officer may enter the premises to carry out such investigations or inspections as may be specified in the order;
 - (e) make such other provision as the court considers appropriate.
- (7) Different provisions in an illegal working compliance order may have effect for different periods.
- (8) The maximum period for which an illegal working compliance order or any provision in it may have effect is 12 months.
- (9) Provision included in an illegal working compliance order which prohibits or restricts access may make such provision—
- (a) in relation to all persons, all persons except those specified, or all persons except those of a specified description;
 - (b) having effect at all times, or at all times except those specified;
 - (c) having effect in all circumstances, or in all circumstances except those specified.
- (10) An illegal working compliance order, or any provision of it, may—
- (a) be made in respect of the whole or any part of the premises;
 - (b) include provision about access to a part of the building or structure of which the premises form part.
- (11) The court must notify the relevant licensing authority if it makes an illegal working compliance order in relation to premises in England and Wales in respect of which a premises licence is in force.

Illegal working compliance orders: adjournment of hearing

- 6 (1) This paragraph applies where an application has been made under paragraph 5 for an illegal working compliance order.
- (2) The court may adjourn the hearing of the application for a period of not more than 14 days to enable any person who has an interest in the premises to show why an illegal working compliance order should not be made.
- (3) If the court adjourns the hearing it may order that the illegal working closure notice continues in force until the end of the period of adjournment.

Extension of illegal working compliance orders

- 7 (1) An immigration officer may apply to the court for an extension (or further extension) of the period for which any provision of an illegal working compliance order is in force.

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- (2) The court may grant an application under this paragraph only if it is satisfied, on the balance of probabilities, that it is necessary to grant it to prevent an employer operating at the premises from employing an illegal worker.
- (3) Where an application is made under this section, the court may issue a summons directed to—
 - (a) any person on whom the illegal working closure notice was served under paragraph 4, or
 - (b) any other person who appears to the court to have an interest in the premises,
 requiring the person to appear before the court to respond to the application.
- (4) If a summons is issued, a notice stating the date, time and place of the hearing of the application must be served on the persons to whom the summons is directed.
- (5) No application may be granted under this paragraph such that an illegal working compliance order, or any provision in it—
 - (a) is extended for a period exceeding 6 months, or
 - (b) is in force for a period exceeding 24 months in total.

Variation or discharge of illegal working compliance orders

- 8 (1) An application may be made to the court under this paragraph—
 - (a) by an immigration officer for an illegal working compliance order to be varied or discharged,
 - (b) by a person on whom the illegal working closure notice was served under paragraph 4, or by any other person who has an interest in the premises, for an illegal working compliance order to be varied or discharged.
- (2) Where an application is made under this paragraph, the court may issue a summons directed to—
 - (a) an immigration officer,
 - (b) any person on whom the illegal working closure notice was served under paragraph 4, or
 - (c) any other person who appears to the court to have an interest in the premises,
 requiring the person to appear before the court to respond to the application.
- (3) If a summons is issued, a notice stating the date, time and place of the hearing of the application must be served on the persons to whom the summons is directed.
- (4) The court may not discharge an illegal working compliance order unless it is satisfied, on the balance of probabilities, that it is no longer necessary to prevent an employer operating at the premises from employing an illegal worker.

Notice and orders: appeals

- 9 (1) An appeal against a decision—
 - (a) to make, extend or vary an illegal working compliance order;
 - (b) not to discharge an illegal working compliance order;
 - (c) to order that an illegal working closure notice continues in force,

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may be made by a person on whom the illegal working closure notice was served under paragraph 4, or any other person who has an interest in the premises.

- (2) An appeal against a decision—
 - (a) not to make an illegal working compliance order;
 - (b) not to extend a provision of an illegal working compliance order, or not to vary such an order, made on the application of an immigration officer;
 - (c) to vary or discharge an illegal working compliance order;
 - (d) not to order that an illegal working closure notice continues in force,
 may be made by an immigration officer.
- (3) An appeal under this paragraph—
 - (a) if it is in relation to premises in England and Wales or Northern Ireland, is to the Crown Court,
 - (b) if it is in relation to premises in Scotland, is to the sheriff appeal court.
- (4) An appeal under this paragraph must be made within the period of 21 days beginning with the date of the decision to which it relates.
- (5) On an appeal under this paragraph the court may make whatever order it thinks appropriate.
- (6) The court must notify the relevant licensing authority if it makes an illegal working compliance order in relation to premises in England and Wales in respect of which a premises licence is in force.

Notices and orders: enforcement

- 10 (1) Where access to premises is prohibited or restricted by virtue of an illegal working closure notice or an illegal working compliance order an immigration officer or a constable may enter the premises and do anything necessary to secure the premises against entry.
- (2) A person acting under sub-paragraph (1) may use reasonable force.
- (3) An immigration officer or a constable, together with any person acting under that person's supervision, may also enter such premises to carry out essential maintenance or repairs.

Notices and orders: offences

- 11 (1) A person who without reasonable excuse remains on or enters premises in contravention of an illegal working closure notice commits an offence.
- (2) A person who without reasonable excuse contravenes an illegal working compliance order commits an offence.
- (3) A person who without reasonable excuse obstructs a person acting under paragraph 4 or paragraph 10 commits an offence.
- (4) A person guilty of an offence under this paragraph is liable on summary conviction—
 - (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks, to a fine or to both;

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- (b) in Scotland, to imprisonment for a term not exceeding 12 months, to a fine not exceeding level 5 on the standard scale or to both;
- (c) in Northern Ireland, to imprisonment for a term not exceeding 6 months, to a fine not exceeding level 5 on the standard scale or to both.

(5) In relation to an offence committed before section 281(5) of the Criminal Justice Act 2003 comes into force, the reference in sub-paragraph (4)(a) to 51 weeks is to be read as a reference to 6 months.

Access to other premises

- 12 (1) Where—
- (a) access to premises is prohibited or restricted by a provision of an illegal working compliance order,
 - (b) those premises are part of a building or structure, and
 - (c) there is another part of that building or structure that is not subject to the prohibition or restriction,
- an occupier or owner of that other part may apply to the court for an order under this paragraph.
- (2) Notice of an application under this paragraph must be given to—
- (a) whatever immigration officer the court thinks appropriate;
 - (b) each person on whom the illegal working closure notice was served under paragraph 4,
 - (c) any other person who has an interest in the premises.
- (3) On an application under this paragraph the court may make whatever order it thinks appropriate in relation to access to any part of the building or structure mentioned in sub-paragraph (1).
- (4) For the purposes of sub-paragraph (3), it does not matter whether provision has been made under paragraph 5(10)(b).

Reimbursement of costs

- 13 (1) Where the Secretary of State incurs expenditure for the purpose of clearing, securing or maintaining premises in respect of which an illegal working compliance order is in force, the Secretary of State may apply to the court for an order under this paragraph.
- (2) On an application under this paragraph the court may make whatever order it thinks appropriate for the reimbursement (in full or in part) by the owner or occupier of the premises of the expenditure mentioned in sub-paragraph (1).
- (3) An application for an order under this paragraph may not be heard unless it is made before the end of the period of 3 months starting with the day on which the illegal working compliance order ceases to have effect.
- (4) An order under this paragraph may be made only against a person who has been served with the application for the order.

Exemption from liability

- 14 (1) Each of the following—

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- (a) the Secretary of State,
- (b) an immigration officer,
- (c) a police officer,
- (d) the chief officer of police under whose direction or control a police officer acts,

is not liable for damages in proceedings for judicial review or the tort of negligence or misfeasance in public office, arising out of anything done or omitted to be done by the person in the exercise or purposed exercise of a power under this Schedule.

- (2) Sub-paragraph (1) does not apply to an act or omission shown to have been in bad faith.
- (3) Sub-paragraph (1) does not apply so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights Act 1998.
- (4) This paragraph does not affect any other exemption from liability (whether at common law or otherwise).

Compensation

- 15
- (1) A person who claims to have incurred financial loss in consequence of an illegal working closure notice, other than one cancelled under paragraph 3(1)(b), may apply to the court for compensation.
 - (2) An application under this paragraph may not be heard unless it is made before the end of the period of 3 months starting with the day on which the notice ceases to have effect.
 - (3) On an application under this paragraph the court may order the payment of compensation out of money provided by Parliament if it is satisfied—
 - (a) that at the time the notice was issued, the condition in paragraph 1(3) or (6) was not met;
 - (b) that the applicant has incurred financial loss in consequence of the notice; and
 - (c) that having regard to all the circumstances it is appropriate to order payment of compensation in respect of that loss.

Guidance

- 16
- (1) The Secretary of State may issue guidance about the exercise of functions under this Schedule.
 - (2) The Secretary of State may revise any guidance issued under this paragraph.
 - (3) Before issuing or revising guidance under this paragraph the Secretary of State must consult—
 - (a) persons whom the Secretary of State considers to represent the views of immigration officers and of chief officers of police, and
 - (b) such other persons as the Secretary of State considers appropriate.
 - (4) The Secretary of State must arrange for any guidance issued or revised under this paragraph to be published.

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Interpretation

17 (1) In this Schedule—

“court”, except where the context otherwise requires, means—

- (a) in relation to premises in England and Wales or Northern Ireland, the magistrates' court;
- (b) in relation to premises in Scotland, the sheriff court;

“owner” in relation to premises, means—

- (a) a person (other than a mortgagee not in possession) entitled to dispose of the fee simple of the premises, whether in possession or in reversion;
- (b) a person who holds or is entitled to the rents and profits of the premises under a lease that (when granted) was for a term of not less than 3 years;

“person who has an interest”, in relation to premises, includes—

- (a) the owner;
- (b) any person with control of or responsibility for the premises;
- (c) any person who otherwise occupies the premises;

“premises” includes—

- (a) any land, vehicle, vessel or other place (whether enclosed or not);
- (b) any outbuildings that are, or are used as, part of premises;

“premises licence” has the meaning given by section 11 of the Licensing Act 2003;

“relevant licensing authority” has the meaning given by section 12 of that Act.

(2) In this Schedule—

- (a) a reference to employment is to employment under a contract of service or apprenticeship, whether express or implied and whether oral or written;
- (b) a person is subject to immigration control if under the Immigration Act 1971 the person requires leave to enter or remain in the United Kingdom.

Amendment of Licensing Act 2003

18 After section 167(1) of the Licensing Act 2003 insert—

“(1A) This section also applies where a court has made an illegal working compliance order under Schedule 6 to the Immigration Act 2016 and the relevant licensing authority has accordingly received a notice under that Schedule.”

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