

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION ACT 2016 (CONSEQUENTIAL AMENDMENTS)
(LICENSING OF BOOKING OFFICES: SCOTLAND) REGULATIONS 2017

2017 No. 1317

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Home Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Immigration Act 2016 (“the 2016 Act”) amended existing licensing regimes in the UK to seek to prevent illegal working in the private hire vehicle (PHV) and taxi sector. With effect from 1st December 2016, section 37 of and Schedule 5 to the 2016 Act prohibit licensing authorities across the UK from issuing a PHV, taxi or operator licence to anyone who is disqualified by reason of their immigration status from holding a licence, and they discharge this duty by conducting immigration checks. The 2016 Act also embeds other immigration safeguards into the existing PHV and taxi licensing regimes across the UK.
- 2.2 However, these 2016 Act provisions did not make amendments in respect of London taxis or operator licences in Scotland (called booking offices). On 1st December 2016, Transport for London amended the London Cab Order 1934 by the London Cab Order (No.2) 2016 to provide for a similar scheme in respect of taxis in London. These booking office Regulations now complete the rollout of these measures across the UK, and require licensing authorities to take into account an applicant’s immigration status when considering licensing applications for booking offices in Scotland.
- 2.3 Applying for, and holding, a booking office licence in Scotland will be conditional on not breaching the United Kingdom’s immigration laws, including employing illegal workers.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 These Regulations are made under the power in section 92(2) of the Immigration Act 2016 which allows the Secretary of State to make such provision as she considers to be “appropriate in consequence of this Act”. The Home Office hopes that it may assist consideration of these Regulations to set out why it has concluded that they represent a proper exercise of that enabling power.
- 3.2 In the first place, the Home Office notes that the wording of section 92(2) confers a broader power than an alternative formulation, which frequently appears elsewhere on the statute book, which provides that an instrument may make amendments “so far as may be necessary in consequence” of another provision. In other words, provision under section 92(2) need not amount to a necessary consequence of the Act, but

instead must represent a reasonable exercise of the Secretary of State's discretion to decide what is appropriate.

- 3.3 The Home Office did consider at the time of the passage of the Bill which led to the 2016 Act whether it was preferable to make provision for booking offices in Scotland by including in Schedule 5 itself amendments to the Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009 ("the 2009 Order"), but it was not thought appropriate to use primary legislation to amend subordinate legislation in this manner.
- 3.4 These Regulations remedy what would otherwise be a jurisdictional gap, which there are no grounds for supposing was the intention of Parliament. The legislative intention was for immigration restrictions to apply to the licensing regime in the taxi and private hire care sector equally in Scotland as in the rest of the UK, and there is support in *Hansard* to this effect. We are mindful, for example, that Lord Bates, Minister of State at the Home Office, said on 20th January 2016 at Lords Committee stage (column 798) of the Bill that the purpose of the Bill was to "mandate immigration checks by all licensing authorities and to embed immigration safeguards in the existing licensing regimes".
- 3.5 The 2016 Act provides for immigration restrictions for the taxi and private hire car sector for the whole of the United Kingdom, including specifically for operator licences in England, Wales and Northern Ireland, which are equivalent to booking office licences in Scotland. The Secretary of State's view is that these Regulations have equivalent effect to those provisions of Schedule 5 to the 2016 Act which insert immigration restrictions into the operators' licensing regime in the Local Government (Miscellaneous Provisions) Act 1976 for England and Wales, the Taxis Act (Northern Ireland) 2008 and Road Traffic Offenders (Northern Ireland) Order 1996 for Northern Ireland.
- 3.6 Further, paragraphs 29 to 32 of Schedule 5 to the 2016 Act amend the taxi hire and private hire vehicle regime in Scotland, to which the licensing regime for booking offices is closely connected.
- 3.7 For this reason, the Home Office considers that these Regulations to flow from the equivalent operator licence provisions for England, Wales and Northern Ireland and the closely connected provisions relating to taxi and private hire vehicles in Scotland in the 2016 Act. The Home Office is therefore satisfied that these Regulations fit within the ambit of what the Secretary of State may properly consider to be "appropriate" in consequence of the 2016 Act.

Other matters of interest to the House of Commons

- 3.8 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons do not arise at this stage.

4. Legislative Context

- 4.1 In Scotland, the 2009 Order designates the use of premises for the carrying on of a business, part of which consists of taking bookings from members of the public for the hire of taxis or private hire vehicles (called private hire cars in Scotland), as an activity for which a licence is required under the Civic Government (Scotland) Act 1982 ("the 1982 Act"). The 2009 Order provides that the licensing provisions in Part

1 of the 1982 Act will apply to these booking office licences with such modifications as are set out in the Schedule to that Order.

4.2 As these measures amend the 2009 Order and do not, in themselves, amend the 1982 Act, the Home Office considers that they are subject to the negative resolution procedure.

4.3 The instrument is being made as part of the implementation of measures in the 2016 Act, specifically to prevent illegal working in licensed booking offices in Scotland. The primary purpose of this measure is to prevent illegal working in licensed premises and which is therefore for an immigration purpose. Consequently, it falls within the reserved competence of the UK Parliament to make these provisions.

5. Extent and Territorial Application

5.1 The extent of this instrument is Scotland only.

5.2 The territorial application of this instrument is Scotland only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 These provisions will complete the rollout of provisions to prevent illegal working in this sector of the economy across the UK. We are making these Regulations because the licensed private hire and taxi sector is vulnerable to illegal working. Illegal working is a major draw for those wishing to come illegally to the UK or to overstay their immigration leave. It often involves wider exploitation of workers and breach of workplace compliance Regulations. It is used by non-compliant employers of illegal workers to undercut legitimate businesses and can have an adverse impact on the wages of British citizens and other people who are lawfully in the UK. It is accordingly a sensible and proportionate response to adapt the existing licensing regimes across the UK to embed immigration safeguards into the application process and make it explicit that immigration compliance is a condition of obtaining and continuing to hold a licence.

7.2 In introducing these immigration safeguards, the aim has been to work with the grain of the existing licensing regime to ensure changes are as light touch as possible whilst achieving the required objectives. In doing so, we wish to ensure that, so far as possible, these new immigration related provisions fit within the existing legislative framework in Scotland, as well as align with the rest of the UK. In making these Regulations, we are introducing measures applicable to Scotland which have similar effect to those provisions contained in section 37 of and Schedule 5 to the 2016 Act for England and Wales and Northern Ireland.

7.3 Non-regulatory options (self-regulation and an accreditation scheme) were considered but did not offer an effective solution for a sector that is already regulated through the licence requirement. Illegal migrants, who by remaining in the UK illegally, demonstrate a willingness to circumvent self-regulatory measures.

- 7.4 Regulation 1 of the Regulations provides that they shall come into force on 22 January 2018. In view of the Christmas holidays we have allowed more than 21 days between the instrument being laid and entry into force, in order to provide sufficient time for scrutiny of these regulations. However, we have not adopted the Common Commencement Date as the provisions have been assessed as having a low cost on business and should be introduced as soon as possible. The introduction of similar provisions in the rest of the UK on 1st December 2016 also departed from the Common Commencement Date.
- 7.5 Regulation 5 provides a new paragraph 3A to the 2009 Order which makes provision to ensure that a person who is not entitled to work in the UK may not hold a booking office licence.
- 7.6 Regulation 6 amends the Schedule to the 2009 Order so that Schedule 1 to the 1982 Act will also apply to booking offices, subject to such modifications as are included in the Schedule to the 2009 Order. It provides that only a person who is entitled to work when resident in the UK, may apply for a booking office licence. For the purposes of these regulations, an individual who is subject to immigration control must have permission to be in the UK which is not invalid, has not come to an end by, for example, being curtailed (cut short) or time expired, or is subject to a condition that prevents the individual from holding a booking office licence. In considering an application, licensing authorities must have regard to any guidance issued by the Secretary of State.
- 7.7 Regulation 7 provides transitional provisions. These Regulations will not apply to existing booking office licences or booking office licence applications made before the commencement of these Regulations. However, they will apply to an application which was granted before commencement of these Regulations when the licence holder applies to renew their licence.

Consolidation

- 7.8 This instrument amends the 2009 Order in Scotland to provide similar Regulations to section 37 of and Schedule 5 to the Act with regard to operator licences in England and Wales and Northern Ireland.

8. Consultation outcome

- 8.1 The Home Office consulted the Scottish Government as the provisions have been developed and this work is ongoing.

9. Guidance

- 9.1 Non statutory guidance will be made available to licensing authorities on how to undertake immigration status checks. These checks will be similar to the checks that licensing authorities in Scotland already make under section 37 of and Schedule 5 to the Act, in respect of applications for taxi and private hire driver licences. Separate guidance on these checks for licensing authorities in England and Wales, Scotland and Northern Ireland is available at:
<https://www.gov.uk/government/publications/licensing-authority-guide-to-right-to-work-checks>.

10. Impact Assessment

- 10.1 The impact on business, charities or voluntary bodies is minimal.

- 10.2 The impact on the public sector is as follows. We have purposely worked with the grain of existing licensing regimes in order to minimise the additional requirements for licensing authorities, but still achieving the policy objectives of preventing illegal working in this sector of the economy. A number of licensing authorities already undertake such checks so, for them, we will be putting these checks on a regulated basis and their additional impact should be minimal.
- 10.3 A Validation Impact Assessment of these measures was published on 21st December 2016. It may be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/594182/Validation_impact_assessment_for_private_hire_vehicles_and_taxis.pdf.
- 10.4 The documents which will demonstrate immigration status and a right to a licence are those which are already commonly checked by licensing authorities and which are checked by employers when establishing a person's right to work. These checks are not intended to provide a barrier to UK nationals seeking a licence, and the list of documents has been designed to include those which are either commonly held by UK nationals or easily obtainable at minimal cost. For British citizens, they include a UK passport or the combination of a full UK birth or adoption certificate together with appropriately documented evidence of a national insurance number. For those subject to immigration control, their immigration status and a right to hold a licence will generally be established through an endorsement in their passport or their Biometric Residence Permit.
- 10.5 The impact on the public sector was set out in the Validation Impact Assessment. However, as licensing authorities in Scotland already check the immigration status of those who apply for a taxi or private hire car licence under section 37 of and Schedule 5 to the 2016 Act, familiarisation costs should be lower as they will be already be aware of the immigration requirements.
- 10.6 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does apply to activities that are undertaken by small businesses. This measure has been designed to effectively combat those who attempt to work illegally in the licensed taxi and private hire sector. It has accordingly been designed to apply equally to all businesses that apply for a booking office licence in Scotland because they intend to provide bookings for four or more taxis or private hire cars (under the 2009 Order, a booking office licence is not required when less than four vehicles are involved with the booking office). It is not appropriate for this measure to otherwise only apply to businesses of a certain size as illegal workers would simply move to those businesses which are exempt from these Regulations.

12. Monitoring & review

- 12.1 The provisions of the Immigration Act 2016, and by extension this instrument, will be subject to the normal period of post-legislative review three to five years after Royal Assent.

13. Contact

- 13.1 Vincent Doran at the Home Office can answer questions regarding this instrument. Email: Vincent.Doran4@homeoffice.gsi.gov.uk.