

EXPLANATORY MEMORANDUM TO
THE LICENSING ACT 2003 (PERSONAL AND PREMISES LICENCES) (FORMS)
(AMENDMENT) REGULATIONS 2018

2018 No. 1381

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Government has improved and simplified the process of ‘right to work’ checks conducted by employers via the parallel Immigration (Restrictions on Employment) (Code of Practice and Miscellaneous Amendments) Order 2018 (“the 2018 Order”). This measure makes consequential changes in relation to the Licensing Act 2003.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The Licensing Act 2003 enables a regime under which premises are authorised to be used for certain activities (referred to as “licensable activities”), namely: the sale of alcohol by retail (for consumption on or off the premises); the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club; the provision of regulated entertainment; and the provision of late night refreshment (the provision of hot food and hot drink between 11pm and 5am). The grant of an authorisation by a licensing authority must be made with a view to promoting one or more of the four licensing objectives: the prevention of crime and disorder, the prevention of public nuisance, public safety and the protection of children from harm.

- 6.2 The 2003 Act contains powers to prescribe forms and notices and makes provision for what they must and may contain.
- 6.3 This measure makes changes to the prescribed forms and notices in Regulations to reflect changes made by the Immigration (Restrictions on Employment) (Code of Practice and Miscellaneous Amendments) Order 2018, which relate to the documentation required to evidence a person's entitlement to work. In particular, these regulations amend the Licensing Act 2003 (Personal licences) Regulations 2005 (S.I. 2005/ 41) and the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (S.I. 2005/42) so as to substitute forms and notices with an up-to-date list of acceptable documents for evidencing an individual's entitlement to work in the UK. This list has been updated to show that full British birth and adoption certificates are no longer necessary to demonstrate an entitlement to work; short certificates are now also acceptable.
- 6.4 The 2018 Order also makes provision for online right to work checks as a method for employers to establish a person's entitlement to work. As a result, corresponding changes are made to the prescribed forms and notices in these regulations.

7. Policy background

- 7.1 The Immigration Act 2016 (the "2016 Act") amended the Licensing Act 2003 in order to introduce immigration safeguards into the licensing regimes for alcohol and late-night catering in England and Wales. The aim of the measures is to prevent illegal working, to which the alcohol and late-night refreshment sector is vulnerable.
- 7.2 Tackling illegal working remains a priority because it is often linked with exploitation of workers and it provides the means for non-compliant employers to undercut legitimate businesses. At the same time, the Government is also clear that it is important to make it easier for right to work checks to be conducted, and for lawful migrants and UK nationals to provide evidence of their entitlement to work.
- 7.3 The measures in the 2016 Act embed right to work checks into the licensing regimes for personal and premises licences for the sale or supply of alcohol and late-night refreshment. Licensing authorities must not grant these licences to those who do not have the right to work in the UK, or who are subject to an immigration condition preventing them from carrying out the work in question. Licensing authorities must carry out simple right to work checks, when considering applications, by checking copies of documents, which applicants submit as part of their application. This must be one of, or a combination of, a list of prescribed documents which are acceptable for the purposes of demonstrating a right to work. This list of documents is included in the relevant licence application forms and reflects the documents that an employer checks to confirm someone's right to work before they commence employment.
- 7.4 The Immigration (Restrictions on Employment) (Code of Practice and Miscellaneous Amendments) Order 2018 makes provision for online right to work checks, carried out using the Home Office online right to work checking service. This service links to Home Office systems to allow migrants to view their current right to work status online and, if they wish, share this with an employer. The 2018 Order provides that employers may rely on online checks to establish a statutory excuse against a civil penalty in the event of illegal working.
- 7.5 The 2018 Order also amends the list of documents which are acceptable to demonstrate a right to work, with the intention of making it easier for individuals to

demonstrate this. It removes the requirement that a British birth or adoption certificate must be a long certificate for these purposes, with the effect that a short British birth certificate is also acceptable.

What is being done and why?

- 7.6 These Regulations make consequential amendments to licensing forms in the Licensing Act 2003 (Personal licences) Regulations 2005 and the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 to reflect amendments, made by the 2018 Order, to the list of documents acceptable to demonstrate a right to work, and to allow licence applicants to provide the information necessary for the licensing authority to conduct an online right to work check in order to confirm the individual is entitled to do the work in question.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 The Government does not consider that consolidation is appropriate at this stage.

10. Consultation outcome

- 10.1 Formal consultation has not taken place in respect of these measures. The Home Office will engage with licensing authorities and relevant licensing stakeholders to explain the measures and to circulate revised guidance.

11. Guidance

- 11.1 Guidance to licensing authorities on conducting right to work checks in respect of applicants for personal and premises licences will be amended in line with these changes and will be made available before entry into force of the measures. This guidance will be circulated to licensing authorities in England and Wales.

12. Impact

- 12.1 There is not expected to be any significant direct costs on business, charities or voluntary bodies. Applicants can continue to demonstrate a right to work by presenting copy documents, as they do now, and so any additional costs to business will be voluntary. However, there may be some minor familiarisation costs to businesses from understanding the new requirements of the form when choosing to demonstrate a right to work via an online check.
- 12.2 There is not expected to be any significant impact on the public sector. Demonstrating a right to work via an online check will not be available in all circumstances, and the option to demonstrate a right to work by presenting copy documents, as applicants do now, remains available in all cases. There may be minor indirect familiarisation costs for licensing authorities in the event that they receive applications from individuals who wish to demonstrate their right to work via the Home Office online right to work checking service.

12.3 An Impact Assessment has not been prepared for this instrument because the expected costs and benefits are expected to be negligible, and there are no direct costs to business.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses but will not have an adverse impact.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that an internal review into the measures giving rise to these consequential amendments will be carried out after 12 months and consideration given to whether that legislation requires amendment.

14.2 The regulation does not include a statutory review clause. The measures in question have negligible costs to business and there are no other reasons to consider a statutory review clause to be appropriate.

15. Contact

15.1 Fiona Cameron at the Home Office Telephone: 0207 035 8599 or email: Fiona.cameron@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Alison Samedi, Deputy Director for illegal migration, identity security and enforcement policy, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Caroline Nokes at the Home Office can confirm that this Explanatory Memorandum meets the required standard.