Draft Regulations laid before Parliament under section 93(2)(e) of the Immigration Act 2016, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.

IMMIGRATION, SCOTLAND

The Immigration (Alcohol Licensing and Late Hours Catering) (Scotland) Regulations 2018

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the powers conferred by sections 36(2) and (3) and 93(6)(c) and (d) of the Immigration Act 2016(**1**), makes the following Regulations.

In accordance with section 93(2)(e) of that Act, a draft of these Regulations was laid before and approved by a resolution of each House of Parliament.

PART 1

CITATION, COMMENCEMENT AND INTERPRETATION

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Immigration (Alcohol Licensing and Late Hours Catering) (Scotland) Regulations 2018 and come into force on the twenty-first day after the day on which they are made.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations—

"the 1982 Act" means the Civic Government (Scotland) Act 1982(**2**);

"the 2005 Act" means the Licensing (Scotland) Act 2005(**3**);

(**1**) 2016 c. 19.
(**2**) 1982 c. 45.
(**3**) 2005 asp 16.

"the 2015 Act" means the Air Weapons and Licensing (Scotland) Act 2015(**4**).

PART 2

ENTITLEMENT TO WORK IN THE UNITED KINGDOM

Entitlement to work in the United Kingdom: alcohol licensing

3. In section 147 of the 2005 Act (interpretation) after subsection (5)(**5**) insert—

"(6) For the purposes of this Act an individual is entitled to work in the United Kingdom if—

(a) the individual does not under the Immigration Act 1971 require leave to enter or remain in the United Kingdom, or

(b) the individual has been granted such leave and the leave—

(i) is not invalid,

(ii) has not ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), and

(iii) is not subject to a condition preventing the individual from doing work relating to the sale of alcohol on any premises.

(7) Where an individual is on immigration bail within the meaning of Part 1 of Schedule 10 to the Immigration Act 2016—

(a) the individual is to be treated for the purposes of subsection (6) as if the individual had been granted leave to enter the United Kingdom, but

(b) any condition as to the individual's work in the United Kingdom to which the individual's immigration bail is subject is to be treated for those purposes as a condition of leave.".

Entitlement to work in the United Kingdom: late hours catering licensing

4. After section 42 of the 1982 Act (late hours catering licences)(**6**) insert—

"**Persons entitled to work in the United Kingdom**

42A.—(1) For the purposes of section 42(2A) an individual is entitled to work in the United Kingdom if—

(a) the individual does not under the Immigration Act 1971 require leave to enter or remain in the United Kingdom, or

(b) the individual has been granted such leave and the leave—

(i) is not invalid,

(ii) has not ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), and

(iii) is not subject to a condition preventing the individual from doing work relating to the use of premises for the sale to or consumption by the public

(**4**) 2015 asp 10.

(**5**) Section 147(5) was inserted by section 184(1) and (4) of the Criminal Justice and Licensing (Scotland) Act 2010 (2010 asp 13) ("the 2010 Act"), and amended by section 59(1) and (5) of the Air Weapons and Licensing (Scotland) Act 2015 (2015 asp 10) ("the 2015 Act"); neither the insertion nor the amendments are yet in force.

(**6**) Section 42 was amended by section 177 of the 2010 Act.

of food between the hours of eleven o'clock in the evening and five o'clock the following morning.

(2) Where an individual is on immigration bail within the meaning of Part 1 of Schedule 10 to the Immigration Act 2016—

(a) the individual is to be treated for the purposes of subsection (1) as if the individual had been granted leave to enter the United Kingdom, but

(b) any condition as to the individual's work in the United Kingdom to which the individual's immigration bail is subject is to be treated for those purposes as a condition of leave.".

PART 3

ALCOHOL LICENSING

Amendments to the 2005 Act

5. The 2005 Act is amended as follows.

Application for premises licence

6. In section 20 (application for premises licence)(**7**)—

(a) in subsection (1), at the beginning insert "Subject to subsection (1A),";

(b) after subsection (1) insert—

"(1A) An individual who is resident in the United Kingdom may not apply for a premises licence in respect of any premises unless the individual is entitled to work in the United Kingdom.

(1B) If, notwithstanding subsection (1A), an individual who is resident but not entitled to work in the United Kingdom applies for a premises licence, the application is invalid and must be treated by the Licensing Board as not having been made.".

Notification of application

7.—(1) Section 21 (notification of application)(**8**) is amended as follows.

(2) In subsection (1)—

(a) omit "and" at the end of paragraph (d);

(b) after paragraph (e) insert—

", and

(f) the Secretary of State.".

(3) In subsection (2)(a), after "chief constable" insert "and the Secretary of State".

(**7**) Section 20 was amended by section 179(1), (2) and (3) of the 2010 Act and S.S.I. 2012/304.

(**8**) Section 21(1) was amended by paragraphs 29(1) to (3) of Schedule 7 to the Police and Fire Reform (Scotland) Act 2012 (2012 asp 8) ("the 2012 Act") and section 180(1) and (2) of the 2010 Act. There are other amendments to section 21 but none is relevant.

Objections and representations

8. In section 22(1) (objections and representations)(**9**), after "any person" insert ", including the Secretary of State,".

Determination of premises licence application

9. In section 23(5) (determination of premises licence application)(**10**), after paragraph (c) insert —

"(ca) that the Licensing Board, having regard to any notice given by the Secretary of State under section 22(1), considers that it is appropriate for the prevention of illegal working in licensed premises to refuse the application.".

Period of effect of premises licence

10. In section 28 (period of effect of premises licence)(**11**), in subsection (5), after paragraph (c) insert—

"(ca) the premises licence holder, being an individual—

(i) ceases to be entitled to work in the United Kingdom at a time when the premises licence holder is resident in the United Kingdom, or

(ii) becomes resident in the United Kingdom without being entitled to work in the United Kingdom,".

Application for transfer of premises licence

11.—(1) Section 33 (application for transfer of premises licence) is amended as follows.

(2) In subsection (1), at the beginning insert "Subject to subsection (1ZA),".

(3) After subsection (1)(**12**) insert—

"(1ZA) An individual who is resident in the United Kingdom may not make an application under subsection (1) unless the individual is entitled to work in the United Kingdom.

(1ZB) If, notwithstanding subsection (1ZA), an individual who is resident but not entitled to work in the United Kingdom makes an application under subsection (1), the application is invalid and must be treated by the Licensing Board as not having been made.".

(4) After subsection (7A)(**13**), insert—

"(7B) Where a Licensing Board receives an application under subsection (1), the Board must give notice of it, together with a copy of the application, to the Secretary of State, unless the Board must refuse the application under subsection (8A).

(7C) Where the Secretary of State is given notice under subsection (7B) and is satisfied that the exceptional circumstances of the case are such that granting the application would be prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must give the Licensing Board a notice stating the reasons for being so satisfied.

(**9**) Relevant amendments to section 22 were made by section 183(2) (partially in force) of and paragraph 4 of Schedule 6 to the 2010 Act, paragraph 29 of Schedule 7 to the 2012 Act and section 43(2) of the 2015 Act.
(**10**) Section 23(5) was amended by sections 43(3) and 55(3) of the 2015 Act.
(**11**) Section 28(2) is prospectively amended by paragraph 4(1) and (2) of Schedule 2 to the 2015 Act.
(**12**) Section 33(1A) is prospectively inserted by section 49(1) and 2(a) of the 2015 Act.
(**13**) Section 33(7A) was inserted by section 44(1) and (2)(a) of the 2015 Act. Section 33(8A) is prospectively inserted by section 49(1) and (2)(d) of the 2015 Act.

(7D) The Secretary of State must give that notice within the period of 21 days beginning with the day on which the Secretary of State is given notice of the application under subsection (7B).".

(5) In subsection (8)(**14**)—

(a) omit "and" at the end of paragraph (b);

(b) after paragraph (c) insert—

", and

(d) no notice has been given under subsection (7C),".

(6) In subsection (10)(**15**), after "subsection (7A)" insert "and any notice given by the Secretary of State under subsection (7C)".

(7) In subsection (11)(**16**), after paragraph (a) insert—

"(aa) that, having regard to a notice given under subsection (7C), it is appropriate for the prevention of illegal working in licensed premises to refuse the application,".

Application for review of premises licence

12.—(1) Section 36 (application for review of premises licence)(**17**) is amended as follows.

(2) After subsection (2) insert—

"(2A) Where a Licensing Board receives a premises licence review application, the Board must give notice of it, together with a copy of the application, to the Secretary of State, unless the Secretary of State is the applicant or the Board intends to refuse the application under subsection (6).

(2B) Where the Secretary of State is given notice under subsection (2A) and is satisfied that the exceptional circumstances of the case are such that the continuation of the licence is prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must give the Licensing Board a notice stating the reasons for being so satisfied.".

(3) After subsection (3)(za) insert—

"(zb) that the continuation of the licence is prejudicial to the prevention of illegal working in licensed premises,".

Review of premises licence on Licensing Board's initiative

13. In section 37 (review of premises licence on Licensing Board's initiative)(**18**), after subsection (2) insert—

"(2A) Where a Licensing Board makes a premises licence review proposal, the Board must give notice of the proposal to the Secretary of State.

(2B) Where the Secretary of State is given notice under subsection (2A) and is satisfied that the exceptional circumstances of the case are such that the continuation of the licence is prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must give the Licensing Board a notice stating the reasons for being so satisfied.".

(**14**) Section 33(8) was amended by section 44(1) and (2)(b) of the 2015 Act and is prospectively amended by section 49(1) and (2)(c) of the 2015 Act.
(**15**) Section 33(10) was amended by paragraphs 1 and 7(1) and (3) of Schedule 6 to the 2010 Act and is prospectively amended by section 44(1) and (2)(c) of the 2015 Act.
(**16**) Section 33(11) was inserted by section 44(1) and (2)(d) of the 2015 Act.
(**17**) Section 36 was amended by section 45(1) and (2)(a) to (c) of the 2015 Act.
(**18**) Section 37 was amended by paragraphs 4(1) and (5) of Schedule 2 to the 2015 Act.