

In this edition, we report on:

- Immigration Act 2016 – Changes to licensing effective from 6 April 2017
- Alcohol Wholesaler Registration Scheme – Offence for Retailers from 1 April 2017
- Food – Nutrition Information and Food Crime
- House of Lords Select Committee Report on Licensing
- Policing and Crime Act 2017

If you have any queries about any of the highlights in this month’s review, or if you need any advice on your licensing requirements, applications or procedures, please contact us.

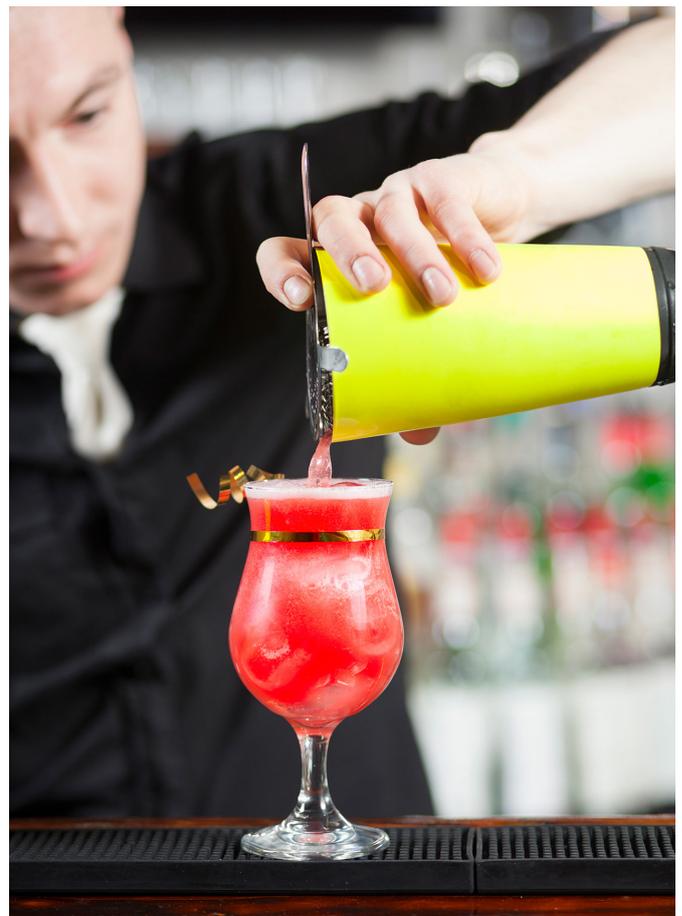
Immigration Act 2016

A number of changes to the Licensing Act 2003 came into force on 6 April 2017, introduced under the Immigration Act 2016.

Personal Licence Application Forms and Proof of Right to Work

New personal licence application forms have been issued by the [government](#) and must be used for all new applications. The amended forms require applicants to confirm that they are entitled to work in the UK and are not subject to any condition preventing them from doing work relating to the carrying on of a licensable activity. In addition, proof of the right to work in the UK must be submitted with the other required documents. The forms include a list of what will be acceptable as proof, including, for example, a British passport or a current biometric immigration document issued by the Home Office.

Importantly for existing licence holders, a personal licence ceases to have effect if the holder of the licence ceases to be entitled to work in the UK. It is, therefore, perhaps more important than ever to ensure that there is a sufficient coverage of personal licence holders. An immediate application to vary the premises licence will, of course, be required if the relevant individual is named as designated premises supervisor (DPS) on your premises licence (you may want to ensure HR teams are briefed accordingly to make you aware of any anticipated work permit expiry dates), as there is no authority to supply alcohol if the named DPS does not have a personal licence in force. This is in addition to the power under the new Policing and Crime Act 2017 for licensing authorities to revoke or suspend personal licences when they become aware that the licence holder has been required to pay an “immigration penalty”.



Premises Licence Applications

In addition to the changes to personal licences, the secretary of state will be a responsible authority for the purpose of premises licence applications, variations, transfers and interim authorities. He will have the right to make representations if he is satisfied that granting the application would be prejudicial to the prevention of illegal working in licensed premises. Where the applicant for a premises licence is an individual, they may only apply if they are entitled to work in the UK; and in similar provisions to those on personal licences, a premises licence will lapse if the holder of the licence ceases to be entitled to work in the UK. As is the case with lapses resulting from insolvency, the licence can only be reinstated within the 28-day period following lapse (by submitting an interim authority or transfer application). If the lapse is only discovered after this initial 28-day period, a new licence application would be required – a good reason for ensuring that premises licences are held in the name of a company (or other organisation) rather than a named individual, wherever possible.

Other Changes

A number of application forms have changed as a result of the act, in addition to personal licence and premises licence application forms. The forms for DPS variations, for example, now include a requirement to state the nationality, place of birth and date of birth of the applicant; and the disclosure of convictions form refers to civil immigration penalties, in addition to “relevant offences” (which now include immigration offences) and foreign offences. Not all of the new forms have been incorporated within the online application system yet, so some local authorities are requesting that forms are submitted by email in the interim period.

There is also a new right of entry to licensed premises for immigration officers to investigate immigration offences.

At least some of the changes to the Licensing Act are perhaps more aimed at sending a “message” rather than making a real difference to illegal working. Given that personal licences are not required for late night refreshment-only licences, it is difficult to see how the changes to the personal licence provisions will impact on food takeaways previously identified by the government as an area of concern. Clearly, those takeaways that close at 11 p.m. will not be affected in any way, as no premises licence would be required (unless they also sell alcohol). The premises licence holder requirements will affect late night refreshment-only licences as well as licences authorising alcohol sales, but only to the extent that the licence is held by an individual rather than a company.

Alcohol Wholesaler Registration Scheme – Offence for Retailers from 1 April 2017

We have previously [reported](#) on the requirement for existing wholesalers of controlled liquor to apply to HMRC to register for the Alcohol Wholesaler Registration Scheme. The deadline for registration for existing wholesalers was 31 March 2016. If you are supplying alcohol to another business, including any franchisee or client, it is likely that you will fall within the definition of wholesaler for this purpose and should be registered. Detailed [guidance notes](#) are available from HMRC.

However, from 1 April 2017, trade buyers who buy their alcohol from UK wholesalers for resale (for example, retailers and operators of on-licensed premises) will need to ensure that the wholesalers are approved. It is now an offence to buy alcohol from a UK wholesaler who is not approved, if you know or have reasonable grounds to suspect that they are not an approved person. There is an [online service](#) available to check if a wholesaler is registered, but this will require you to obtain the unique reference number from your supplier.



Food – Nutrition Information and Food Crime

Many licensed businesses involve the production and/or sale of food. Under the EU Regulation on Food Information (Regulation (EU) No. 1169/2011), new nutrition rules came into force on 13 December 2016. The new rules introduced a **mandatory** nutrition declaration for most **pre-packed products** (although alcohol over 1.2% is currently exempt).

For non-prepacked food, including food sold in a restaurant/pub/sandwich bar or on a delicatessen counter, there is no such requirement. However, for these foods, if you provide nutrition information voluntarily, the format provided must be either: the full “mandatory” nutrition declaration; energy value only; or energy, plus fat, saturates, sugars and salt. In England and Wales, the primary enforcement mechanism will be improvement notices, but failure to comply in Scotland may be dealt with from the outset as a criminal offence. In Scotland, enforcement authorities also have the power to seize or detain food where it appears that food information law is being contravened (for further information, please read our [summary](#) of the requirements).

All food businesses should also be aware that on 28 November 2016, the Food Standard Agency’s National Food Crime Unit launched “Food Crime Confidential”, a reporting facility targeted at those working in or around the UK food industry, where anyone with suspicions about “food crime” can confidentially report them over the phone or by email. Typically, this might be a concerned or even a disgruntled employee, or indeed a customer. We have reported on the background to the launch, the requirement for food and drink businesses to monitor and assess supply chain threats and the challenges and opportunities available to operators in the sector, in an [article](#) available on our website.



House of Lords Select Committee Report on Licensing

A House of Lords Select Committee has published its [report](#) into licensing. A government response is expected within two months. The report includes a number of recommendations to government, including a trial merger of licensing committees with planning committees; and licensing appeals to be considered by planning inspectors. Other recommendations and findings include references to the licensing objectives (no new objectives to be introduced but a requirement for disabled access and facilities statement to form part of the application), a national database for personal licence holders linked to the Police National Database and mandatory training for councillors and police licensing staff.

Additionally, the report suggests that if minimum unit pricing is introduced in Scotland, it should also be introduced in England and Wales, once Scottish ministers have published a statutory assessment in relation to Scotland. Minimum alcohol pricing plans were backed by the Scottish courts and the trade press have [reported](#) on this recently, but the ruling could still be appealed in the UK Supreme Court. In the interim period, the select committee considers that Scotland’s provisions for the off-trade should be adopted in England and Wales as soon as possible with encouragement to adopt in the meantime via the Statutory Guidance to Licensing Authorities (under section 182 of the Licensing Act 2003):

- Restrictions on multipack pricing
- Bans on “buy one get one free” or other offers including free alcohol
- Restrictions on advertising drinks promotions, restricting them to specific designated alcohol display areas
- Challenge 25 policies

In addition, the committee recommends that the introduction of locally set licence fees, which we have reported on [previously](#), should be progressed (the government announced in February 2015 that these proposals would not proceed, with a focus instead on an alternative arrangement in relation to annual fee payment dates); and that the Licensing Act 2003 should apply in airports, ports and hover ports (currently no licences are required “airside” or “portside”, i.e. once a customer is through passport control). The committee accepted, though, that the sale of alcohol on a railway journey does not need to be licensed, particularly given that railway companies already have the power to ban the sale and consumption of alcohol, for example on train journeys to football matches.

Clearly, if all of the recommended changes are adopted by the government, they may mean some far-reaching changes for licensed businesses. However, it is important to remember at this stage that this is just a report and the changes require approval and implementation to be introduced. It may well be the case that there are other priorities for the government short-term, particularly as we are now in the countdown to Brexit!

Policing and Crime Act 2017

The [Policing and Crime Act 2017](#) includes numerous measures relating to policing and crime generally, as well as a section dealing specifically with alcohol and late night refreshments. The relevant provisions came into force on 6 April 2017 and include provisions clarifying the position with interim steps imposed by a licensing committee pending a full review of the premises licence and reviews of interim steps on summary reviews of premises licences.

In addition, the act allows licensing authorities to revoke or suspend personal licences when the holder is convicted of a "relevant offence". Previously, this power was reserved for the court; and if the licensing authority found out that a licence holder had been convicted after the event (because, for example, the licence holder had failed to notify the court that they were a personal licence holder), there was little the authority could do about it. Many authorities will, therefore, welcome this change. This power also applies if the authority becomes aware that the holder has been required to pay an immigration penalty at any time before or after the grant of the licence.



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