

# Immigration and Licensing

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Crowne Plaza Hotel, Chester

# The Immigration Acts 2006 and 2016

# Immigration, Asylum and Nationality Act 2006

- Criminal offence in s. 21
- Offence to employ an employee if you know they are disqualified from employment by reason of their immigration status; or if you have reasonable cause to believe that they are disqualified.

*(1B) For the purposes of subsections (1) and (1A) a person is disqualified from employment by reason of the person's immigration status if the person is an adult subject to immigration control and—*

- (a) the person has not been granted leave to enter or remain in the United Kingdom, or*
- (b) the person's 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.*

- Can also be dealt with by civil penalty under s. 15
- Note wide meaning of employment:

## ***25 Interpretation***

*In sections 15 to 24–*

*...*

*(b) a reference to employment is to employment under a contract of service or apprenticeship, whether express or implied and whether oral or written,*

- Employers avoid civil penalty if they carry out sufficient checks in relation to employees' immigration status and retain records of having done so (s. 15(3)):
  - “An Employer’s Guide to Right to Work Checks” (Home Office, Jan 2019)
  - “Code of practice on preventing illegal working” (Home Office, Jan 2019)

# Immigration Act 2016 – Amendments to the Licensing Act 2003

- Entitlement to work test for personal licence holders and individual premises licence holders
- Increased requirements to produce evidence of entitlement to work
- Applicants for DPS must provide nationality and confirm they are entitled to work in the UK
- Home Office Immigration Enforcement now a Responsible Authority
- Rights of entry to licensed premises for immigration officers

# Immigration and the Licensing Sub-Committee

# The Secretary of State's Guidance on the Licensing Act 2003

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*2.6 The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises.*

...

*11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:*

...

*- for employing a person who is disqualified from that work by reason of their immigration status in the UK;*

*11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.*

*East Lindsey v Abu Hanif* [2016] EWHC 1265 (Admin)  
Facts and MC decision

- Premises was restaurant and takeaway on the Lincolnshire coast
- Licensed to sell alcohol ancillary to the supply of food.
- Found to have been employing a chef with no entitlement to remain in the UK
- Licensee accepted that he had employed the chef without any immigration paperwork; and had paid him cash in hand, less than the minimum wage.
- Licensee had received a civil penalty but no conviction
- LSC revoked licence. MC allowed the premises' appeal.

*East Lindsey v Abu Hanif* [2016] EWHC 1265 (Admin)  
High Court

- MC wrong to base decision on whether or not licensee had received any criminal convictions for employing illegal workers
- Real question was whether revocation of licence was appropriate and proportionate in light of the prevention of crime objective: this is a much broader question. It carries with it twin considerations of prevention and deterrence.
- In this case, various criminal offences must have been committed.
- Every case turns on its own facts.

## Restaurant G, Knightsbridge (Royal Borough of Kensington & Chelsea)

- One member of bar staff without right to live and work in the UK;
- Restaurant (and individual) say that he was on a temporary, three day trial;
- Restaurant says he would have been required to provide docs had he “passed” the trial;
- Some other minor noise/nuisance concerns.
- LSC: suspension for 7 days and new conditions...

## Restaurant G's new conditions

- 1) No person shall be allowed to work (including permanently, temporary or on a trial basis) at the premises unless they have and are able to demonstrate the right to work.
- 2) Right to work checks shall to be carried out by or on behalf of the Premises Licence Holder on all persons carrying out work within the premises, whether paid or otherwise, temporary or permanent, before those persons commence work. The documentation for each such person shall include the original documents to show they have a right to work in the UK and date-stamped colour copies of all documents produced and enquires made shall be retained on the Premises confirming the name of the person who has checked the original documents, any enquiries made. This information shall be retained in each case for a minimum of 3 years. Such copies to be kept on the premises and made available for immediate inspection by Police, Licensing or Immigration Officers.
- 3) Right to work audits of all persons working at the premises shall to be carried out at least annually, and sooner where any visas are time limited and where the status of the person to remain in the UK has changed. Records of said audits shall be retained for a period of at least 3 years and made available for immediate inspection by Police, Licensing or Immigration officers.
- 4) No worker within the Premises shall be paid less than the prevailing statutory minimum wage.

# The Impact of Brexit

## Effect on the industry

- C. 40% of workers in the restaurant/hotel/pub sector are from the EU, with staff from the rest of the world at c. 10% (British workers being c. 50%)
- The pub sector fares better with around 15.7% from the EU (over 50% in hotel sector)
- But pubs have the highest turnover of workers at an average tenure 9 months compared to hotels and restaurants at around 16 months

## The (current) plan

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After Brexit, citizens of EEA countries will need to apply for:

- “Settled Status” which allows them to work in the UK as long as they like if they can show continuous residence in the UK for 5 years from before 31 December 2020
- “Pre-Settled Status” (if they do not have 5 years continuous residence) which allows them to work for 5 years after which they would need to reapply.