

Regulatory Triage Assessment

Title of regulatory proposal	Introduction of Immigration Status Check to Alcohol and Late Night Refreshment Licence Applications
Lead Department/Agency	The Home Office
Expected date of implementation	2016
Origin	Domestic
Date	09/10/2015
Lead Departmental Contact	Sam Murray, IBPD, 020 7035 6918
Departmental Triage Assessment	Low-cost regulation (fast track)

Rationale for intervention and intended effects

Illegal working often results in abusive and exploitative behaviour, the mistreatment of illegal migrant workers, tax evasion, undercutting of legitimate business and adversely impacts on the employment opportunities of lawful migrants and British citizens. Illegal migrants can obtain premises or personal licences under current legislation (the Licensing Act 2003), as local authorities have no legislative authority to deny illegal migrants a licence and are not required to check their legal status in the UK.

Immigration enforcement officers frequently encounter illegal migrants employed by businesses holding alcohol and late night refreshment licences. Of all civil penalties served in the year to June 2015, 82 per cent were served on the retail industry or hotel restaurant and leisure industry sectors. A large proportion of which hold premises or personal alcohol licences.

Government intervention is necessary to amend the 2003 Act to ensure that illegal migrants cannot obtain premises licences, or manage or work in licensed premises in order to better prevent and deter illegal migrant working in this particularly high risk sector. This is a contribution to making it more difficult for illegal migrants to live and work in the UK and to encourage voluntary departure. There is a separate legal provision which places a duty on employers to prevent illegal working under section 15 of the Immigration, Asylum and Nationality Act 2006. In practice this is discharged by employers by conducting right to work checks on their employees.

Viable policy options (including alternatives to regulation)

The do nothing option does not amend the 2003 Act and no check on immigration status would be conducted. There are no significant costs associated with this option but as it does not meet the policy objective, it is not the Government's preferred option.

The policy option under consideration is to: add Immigration Enforcement (IE) to the existing list of responsible statutory authorities under the 2003 Act. IE will be notified of new licensing applications. The onus is on IE to make representations in respect of the applicant's immigration status, including right to work, and immigration offences and illegal working penalties. Someone who does not have lawful status and the right to work will be prohibited from making an application, in the same way as someone who is less than 18 years of age. As well as being a material factor in the application process, immigration offences and penalties will also be a ground for revocation of a premises licence where they undermine the existing licensing objectives. Applicants will need to provide information of nationality and any period of leave granted to them by submitting a copy (certified by a person of standing in the community) of one of a number of specified documents, such as a passport or biometric residence permit. The policy will also permit immigration officers to enter licensed premises, as a person authorised under the 2003 Act, to investigate immigration offences or breaches of immigration law without a warrant.

Non-regulatory options are not considered to be effective, as those to be affected are operating illegally.

Initial assessment of business impact

This policy has been designed to effectively combat those who attempt to work illegally in the licensed trade sector and attempts to minimise the burdens on licensing authorities by fitting the immigration related provisions within the existing licensing framework. This includes adding IE (enforcement teams) to the list of responsible authorities and placing the onus on IE to make any representations about an individual's application. Where the IE enforcement team does not respond when notified of a new licence application, the application process will simply continue and the licensing authority will determine the application on the basis of available information.

- This measure would affect about 9,600 new premises applications¹ per year and 34,000 personal licence applications¹ per year a total of 43,600 applications per year.
- Private sector impacts are familiarisation and ongoing costs, comprising staff costs for reviewing the new element of the guidance when a new application is made, additional time taken to complete the extra question and administration costs. Total gross costs to business are estimated to be about £100,000 per year or £0.9 million (PV)⁵ over 10 years. In the high scenario the estimate is £160,000 per year or £1.4 million (PV)⁵ over 10 years.
- The Home Office has consulted the industry and licensing authorities to find out more about the time taken to complete the additional question, the structure of the licensed trade sector and the types of people/firms/organisations that make licence applications to the licensing authority.
- The main benefit from this policy is to ensure that illegal immigrants cannot obtain premises licences, or manage or work in licensed premises. This is a contribution to making it more difficult for illegal migrants to work in the UK and to encourage voluntary departure. This benefit is hard to quantify. Some licensing authorities report that illegal working is a significant problem in the licensed trade sector, especially the late night refreshment sector and some trade organisations have concerns about maintaining reputation so it is expected that this proposal will be well received by both licensing authorities and the sector.

Business Impact Target

Business Impact Target Status: The preferred option is in scope for the Business Impact Target in accordance with s.21 of the Small Business, Enterprise and Employment Act 2015. The EANCB is estimated to be £0.1 million and the business net present value is estimated to be -£0.9 million over the 10 year appraisal period.

Rationale for Triage rating

The proposed measure is a low-cost regulation that qualifies for the fast track process because the gross costs to business (even at the high estimate) do not exceed £1 million in any single year.

Departmental signoff (SCS): Philippa Rouse Date: 09/10/2015

Economist signoff (senior analyst): Jackie Honey Date: 09/10/2015

Better Regulation Unit signoff: Gideon Winward Date: 09/10/2015

Supporting evidence

1. The policy issue and rationale for Government intervention

Many licensing authorities report they have significant problems with individuals that have no right to remain (and therefore no right to work) in the UK². They can obtain alcohol and late night refreshment licences and operate licensed premises, such as small shops selling alcohol. These premises are often associated with poor practice (for example, failing to carry out routine age verification checks on those who appear to be under the age of eighteen). Licensed premises are frequently the target of immigration enforcement activity on illegal workers (including late night takeaways, regulated under the 2003 Act).

Immigration officers cannot enter these premises without reasonable cause to suspect that illegal working is taking place unless they have a warrant to do so or they have the business owner's consent. These existing pre-conditions relate to the conduct of enforcement operations designed to apprehend immigration offenders, rather than routine activity designed to inspect compliance with licensing conditions. Government intervention is necessary to amend the 2003 Act to ensure that illegal migrants cannot obtain premises licences, or manage or work in licensed premises. The aim is to reinforce to employers in this sector their existing right-to-work checking responsibilities to prevent illegal working and therefore reduce the likelihood of enforcement action becoming necessary. Government intervention is also necessary to provide that immigration officers (IOs) can enter licensed premises without a warrant for the purpose of investigating immigration offences related to the activities authorised under the 2003 Act. By bringing IO powers of entry into line with those of local authority licensing staff under the 2003 Act, this will facilitate visits to premises, provide clarity and reduce time taken to understand entry with consent for both businesses and IE.

The IOs' role will be strictly limited to the immigration aspects of the licence, particularly the inspection of copies of right to work documents checked by the employer. The intention is that immigration officers will normally exercise this new power when accompanying local authority licensing staff as part of a normal visit to inspect the businesses' wider compliance with the conditions of its licence, as now. There may be occasions where immigration officers visit premises without this being as part of a licensing authority-led inspection. The involvement of immigration staff in visits will continue to be carefully targeted on the basis of intelligence or as part of specific operations/campaigns aimed at reducing illegal working in particular local areas. There is no intention to have extra/longer inspections on compliant businesses therefore compliant businesses will not bear any additional costs due to this.

2. Policy objectives and intended effects

The Government's primary objective is to make it more difficult for illegally resident individuals to obtain a licence, and operate licensed premises in which there are serious immigration law breaches. The intended effect is to encourage more people who are illegally resident to choose to leave the country and to reduce the numbers who overstay.

3. Policy options considered, including alternatives to regulation

Option 1 is the do nothing option. This does not amend the 2003 Act and no check on immigration status would be conducted. There are no significant costs associated

with this option but as it does not meet the policy objective, it is not the Government's preferred option.

The proposed policy, Option 2, which is under consideration, includes measures to:

- Through the legislation make the Secretary of State a responsible authority under the Licensing Act 2003 (in practice this will be IE) so that they are notified of new applications so it can make representations about the applicant's lawful status and immigration offences and penalties. Applicants will be required to complete an additional question confirming their nationality and permission to live and work in the UK. There will be a requirement for proof to be provided in the form of a certified copy of a specified document. The licence application process is moving to become an increasingly on-line process (about 60% of licence applications are currently lodged on-line), with copies of documents being scanned and provided electronically rather than by post, thereby keeping the additional requirements on businesses and licensing authorities to a minimum.
- Make breaches of immigration law - including illegal working, one of the material factors in the application process and also one of the grounds for revocation of a premises licence. This will strengthen the sanction for existing immigration offences, enabling licensing authorities to take action against seriously and persistently non-compliant businesses (for example, where a business has breached multiple workplace compliance regulations, including illegal working, and is not currently or likely to be compliant). The licence will only be revoked as a proportionate response taking into account the behaviour of the business. Revocation will not be automatic but will be carefully considered by the licensing authority on a case by case basis, on the basis of the existing licensing objectives and taking into account all the circumstances. It is important to note that these are not new compliance obligations on individuals and businesses, as these are already in place or will be as a result of the planned Immigration Bill. Any impacts will therefore fall on non-compliant businesses. Compliant businesses will be unaffected.
- Permit immigration officers to enter licensed premises as persons authorised under the 2003 Act (in the same way as licensing officers), where they will investigate immigration offences or breaches of immigration law connected with activities authorised under the 2003 Act. Immigration Officers will normally use this new power to accompany local authority licensing staff during routine compliance inspections or as part of specific operations designed to reduce illegal working in a local area, and immigration officers will focus solely on the immigration aspect of the licence conditions. Combined visits are already undertaken and provide greater efficiency for both businesses and enforcement bodies than separate visits to the premises. It should not be necessary for a business to close during such a visit, whilst back office records are inspected. Visits may be announced or unannounced and could be conducted whilst the business is open for trading or whilst closed to customers. Without an increase in IE resource, these measures will increase the efficiency of current enforcement activity by aligning entry powers rather than increasing the amount of enforcement in the sector (and any increases here would result in decreases elsewhere). It is not therefore expected that there will be any significant change in impact on business from this measure, aside from the greater clarity provided by IOs' powers of entry being brought into line with those of licensing authority staff. There is no intention to have extra/longer inspections on compliant businesses therefore compliant businesses will not bear any additional costs due to this.

- Ensure an alcohol and late night refreshment licence issued to those granted temporary permission to be in the UK will only remain valid for the duration of their permission to be in the UK which entitles them to work. Currently employers are required to conduct right to work checks on their employees and may receive a civil or criminal sanction for breaching these requirements. Furthermore, the forthcoming Immigration Bill will make it a criminal offence for an illegal migrant to work in the UK. This measure therefore brings alcohol and late night refreshment licences into line with current and planned legislation. Licences issued after the commencement of these arrangements will deem to lapse if the holder's lawful status ends. This means that a licensing authority does not have to take action to revoke a license. Should a licence holder extend their leave and right to work their existing licence will remain valid and they will not need to apply for another licence. Where a premises licence is issued before the commencement of these arrangements and is revoked because the person no longer has the right to work in the UK, that individual will be in the UK in breach of immigration laws and may be liable to removal from the country. Such an individual should not, in any case, be involved in running or being employed in a business. Employers are already required to monitor their employees' right to work through existing legislation, so there will be no additional impact on compliant business.

Non-regulatory options (self-regulation and an accreditation scheme) were considered but did not offer effective solutions to the problem and did not meet the policy objective nor are they expected to achieve the intended effect. The licensing scheme is already in existence so introducing a non-regulatory option was seen as undesirable by the industry and licensing authorities when they were consulted. Illegal migrants, who by remaining in the UK illegally demonstrate a willingness to flout UK law, may go to further lengths to circumvent self-regulatory measures. Licensing authorities cited document fraud and impersonation as two problem areas which would not be detected if a regulatory regime was not in place.

4. Expected level of business impact

Costs to business in scope of the Estimated Annual Net Cost to Business (EANCB) will be the administration costs of answering an additional question when applying for a licence, and additional processing costs (for example, photocopying).

Making immigration offences a material factor in the application process and also a ground for revocation of a premises licence, will not impact on legitimate business. These are not new compliance obligations on business, as these are already in place. The Immigration Bill 2015 extends the scope of sanctions that may be applied to non-compliant businesses, not compliant ones. The current legislation also applies to individuals if they work illegally in breach of their conditions. The Immigration Bill 2015 will limit the length of a licence to the length of their permitted stay visa stay thereby reducing the likelihood of overstayers working illegally in this sector as it will be clear to employers what their visa and right-to-work permissions allow.

Increasing enforcement powers to inspect will enable enforcement resources to be used in a more targeted way. Without increasing the overall enforcement resource, this measure will make enforcement activity more effective by aligning entry powers rather than increasing the amount of enforcement in the sector (and any increases here would result in decreases elsewhere).

Underlying Assumptions

The assumption for reading the guidance notes on the form (about 200 words) for the additional question is taken to be 30 seconds, two and four minutes for the low, central and high scenarios. The reading times were estimated using standard tables from readingsoft.com⁹ (columns 2 and 3). Because of lower comprehension a slow reader may need to re-read the guidance (column 4). An allowance has been made for people who may be dyslexic or where English is not their first language.

Scenario	Speed wpm	Comp	Re-read	Allowance	Total time
High	(slow) 100	50%	1.0	1.0	4.0
Central	(average) 200	60%	0.4	0.5	2.0
Low	(good) 400	80%	0.0	0.0	0.5

Notes: wpm = words per minute. Comp = comprehension. Units are minutes unless otherwise specified.

Familiarisation applies to individual applicants and to solicitors and agents in the private sector who specialise in licensing work. It is not known how many multiple applications solicitors or agents may handle so familiarisation is assumed to take place when a new application is required, although we recognise this may be an over-estimate of their actual familiarisation cost. Applicants may use agents/specialised teams because it is more economical for them (lower familiarisation and operational costs plus specialisation of labour gains) and this policy makes no change to this.

All applicants will be required to provide the licensing authority with a copy (certified by a person of standing in the community) of a stipulated document such as a passport that can be passed to the IE local enforcement team for checking. Where applicants do not have passports or other recognised ID documents, a birth certificate and national insurance number may be required. Applicants may incur an additional photocopying cost, and some applicants may post their application although most applications are made online but this policy will not affect this (nor increase postage costs). For the purpose of testing that this is a low cost measure the administration (photocopying) costs are included in this assessment.

Consultation with the industry, trade representative bodies, licensing authorities, the Local Government Association, the Institute of Licensing and the police indicate that for single applicants it may take 4, 8 or 12 minutes (for a low, central and high scenario) to provide the additional information (including time taken to provide documentary evidence to demonstrate a right to be in the UK and work. However, solicitors/agents are assumed to take half this time (2, 4 or 6 minutes) as they are very accustomed to this type of work. It is assumed that in the low scenario 67 per cent of applications are dealt with by solicitors, in the central 50 per cent and in the high 33 per cent. This is because it is assumed to be more economical, therefore the high costs scenario has the least amount of solicitor led applications. The proportion of single applicants is (1- the proportion of solicitor led applications for each scenario).

There were 204,300 licensed premises in 2013/14¹ but this measure would affect about 9,600 new premises applications per year¹. There were 581,000 personal licences in existence in 2013/14¹ and it is expected that this proposal will affect 34,000 personal licence applications¹ per year. Total applications per year is 43,600.

Familiarisation Costs

The private sector familiarisation cost is calculated as:

- Solicitors/agents: (volume of applications 43,600 x proportion dealt with by solicitors / agents, 0.67, 0.50 or 0.33 = 29,100, 21,800 and 14,500) x additional familiarisation time (30 seconds, 2 or 4 minutes) x ASHE 2014 median gross wage for solicitors (SOC 2413)³. (Central = 21,800 x 2 minutes⁴ x £25.88). This cost occurs in each year and is estimated to be around £0.2 million (PV)⁵ over 10 years in the central and high cases. There is little difference in cost between the central and high scenarios.
- Single applicants: (volume of applications (43,600) x proportion dealt with by individuals, 0.33, 0.50 or 0.67 = 14,500, 21,800 or 29,000) x additional familiarisation (30 seconds, 2 or 4 minutes) x ASHE 2014 median gross wage for licensed trade employees (SOC 1224)³. Central estimate is (21,800 x 2 minutes⁴ x £11.90). This is estimated to be about £0.1 million (PV)⁵ over 10 years, with a low-high range of £0.0 million (PV) to £0.2 million (PV) over the same time period.
- The total private sector familiarisation cost ranges from £0.1 million to £0.4 million (PV) over 10 years, with a central estimate of £0.2 million (PV) over the same period.

Processing Costs

The private sector question processing cost (including providing copies of documents where needed) is calculated as:

- Solicitors/agents: volume of applications (43,600¹ x 0.67, 0.5 or 0.33) x additional processing time (2, 4 or 6 minutes) x ASHE 2014 median gross wage for solicitors (SOC 2413)³. (Central = 21,800 x 4 minutes⁴ x £25.88). This is an ongoing cost and is estimated to be £0.3 million (PV)⁵ over 10 years or £38,000 per year, with a low-high range of £0.2 million (PV) to £0.3 million (PV) over the same time period.
- Single applicants: (volume of applications (43,600) x proportion dealt with by individuals, 0.33, 0.50 or 0.67 = 14,500, 21,800 or 29,000) x additional time (4, 8 or 12 minutes) x ASHE 2014 median gross wage for licensed trade employees (SOC 1224)³. Central estimate is (21,800 x 8 minutes⁴ x £11.90). This is estimated to be £0.3 million (PV)⁵ over 10 years or £35,000 per year, with a low-high range of £0.1 million (PV) to £0.6 million (PV) over the same time period.
- The total cost of processing the additional question: (the methodology is given above) this is estimated to be £0.6 million (PV)⁵ over 10 years or £72,000 per year. This lies within a range of £0.3 million (PV) to £0.9 million (PV) over a ten year period.

Administration Costs

- Administration costs include photocopying. A low, central and high estimate is included. The cost of copying is given as 2p (in-house), 4p (by a solicitor or agent) and 8p (commercial rate). These estimates are taken from informal discussions with local authorities. The copying cost is the volume of applications x the relevant costs. The total administration cost is estimated to be £0.0 million (PV)⁵ over 10 years and in the high estimate is only £30,000 (PV) over 10 years.

- The Home Office has limited information on the time taken to provide the required information, the proportion of applications dealt with by solicitors/agents and the structure of the licensed trade sector. The Home Office has used the consultation to ask trade bodies and local authorities for more information on this. This is so that a more informed assessment of the impact can be made and so that the Home Office better understands the requirements of the sector.

Total Cost to Business

- A low, central and high scenario has been estimated for the costs to business varying the time taken for familiarisation, time taken to prepare applications and administration costs. The costs to business are in a range of £0.4 million (PV) to £1.4 million (PV) over 10 years, with a central estimate of £0.9 million (PV) over the same period or £0.1 million per year. The preferred option therefore falls well within scope of the fast-track process threshold, and is in scope for the Business Impact Target in accordance with s.21 of the Small Business, Enterprise and Employment Act 2015. This is a low cost regulatory “IN”.

References

Department of Business, Innovation and Skills (2015) Better Regulation Framework Manual, Practical Guidance for UK Government Officials, Better Regulation Executive, March, London.

Department of Business, Innovation and Skills (2013) One-In, Two-Out (OITO) Update (update on One-In One-Out Methodology from 2011), January, London.

The Home Office (2014) User Guide to Alcohol and Late Night Refreshment Licensing Statistics, December, London.

The Home Office (2014) Alcohol and Late Night Refreshment Statistics: March 2014, December, London.

HM Treasury (2003) The Green Book, Appraisal and Evaluation in Central Government, (2003 version includes amendments made in July 2011), London.

Sources

1. Alcohol and Late Night Refreshment Statistics: March 2014, Stock figures, see Table 2; Change of 34,000 see Table 2 change and Table 14a (surrendered, lapsed and suspended); Change of 9,600 see Table 7a, new applications.
2. Immigration Intelligence and; Immigration and Border Policy Development, unpublished material.
3. ONS (2015) Annual Survey of Hours and Earnings, Occupations and gross median wages, Table 14.5a.
4. Assumption based on informal discussions with local authorities, Home Office policy teams and analysts. More information will be sought about the time taken to process an additional question in the alcohol and late night refreshment licence during the consultation.
5. A social discount rate of 3.5 per cent is used to obtain present values, see HM Treasury (2003) Green Book.
6. Department of Business, Innovation and Skills (2015) Better Regulation Framework Manual, Practical Guidance for UK Government Officials, v2, Better Regulation Executive, March, London; and Department of Business, Innovation and Skills (2013) Better Regulation for SME and Micro Businesses – Q&A, December, London.
7. Alcohol and Late Night Refreshment Statistics: March 2014, Table 3.
8. Department of Business Innovation and Skills (2014) Business Population Estimates, November, London, Table 1, UK Private Sector.
9. <http://www.readingsoft.com/> Estimates of reading speed are given by a number of reading software companies and this particular website has been used to estimate the time taken to read 200 words of guidance on an application form.