

[This instrument contains a draft outline of proposals for secondary legislation arising out of clause 34 of the Immigration Bill. It is a working draft and has been prepared purely for illustrative purposes and for assisting with discussion during the passage of the Bill. Further work and discussions will be required before the Regulations can be finalised.]

Draft Regulations laid before Parliament under section 34(2) of the Immigration Act 2016, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

**** No. ****

IMMIGRATION

The [Draft] Immigration (Late Hours Catering) (Scotland)
Regulations ****

Made - - - - ****

Coming into force - - ****

The Secretary of State, in exercise of the powers conferred by section 34 of the Immigration Act 2016(a), makes the following Regulations.

PART 1

CITATION, COMMENCEMENT AND INTERPRETATION

Citation, commencement and interpretation

1. These Regulations may be cited as the [Draft] Immigration (Late Hours Catering) (Scotland) Regulations [...] and come into force on [DATE TO BE INSERTED].

2. In these Regulations “the 1982 Act” means the Civic Government (Scotland) Act 1982(b).

PART 2

AMENDMENTS TO THE 1982 ACT

Amendments to Part 1 of the 1982 Act

3. In Part 1 of the 1982 Act (licensing – general provisions) after section 6 insert—

(a)

(b) 1982 c. 45.

“6A Powers of entry and inspection: immigration offences

- (1) An immigration officer may, at any time, enter and inspect—
 - (a) any premises in relation to which a late hours catering licence is in force for the purpose of determining whether an immigration offence is being committed in connection with the carrying on of activities in the premises, or
 - (b) any premises in relation to which the conditions in subsection (2) are satisfied for the purpose of determining whether an immigration offence is being committed in connection with the carrying on of activities in the premises.
- (2) The conditions referred to in subsection (1)(b) are that—
 - (a) the immigration officer has reasonable grounds to suspect that the premises are used between the hours of eleven o’clock in the evening and five o’clock the following morning for the sale to or consumption by the public of food, and
 - (b) a late hours catering licence is required for that use of the premises, but such a licence is not in force in relation to the premises.
- (3) The reference in subsection (2)(a) to the sale of food is to the sale of food for consumption on as well as off the premises in which it is sold.
- (4) Where an immigration officer exercises the power in subsection (1) in relation to any premises in relation to which a late hours catering licence is in force, the persons specified in subsection (5) must—
 - (a) give the officer such assistance,
 - (b) provide the officer with such information, and
 - (c) produce to the officer such documents,
as the officer may reasonably require.
- (5) The persons referred to in subsection (4) are—
 - (a) the holder of the licence, and
 - (b) any person working on the premises at the time the officer is exercising the power.
- (6) An immigration officer exercising the power conferred by subsection (1) may, if necessary, use reasonable force.
- (7) A person who—
 - (a) intentionally obstructs an immigration officer in the exercise of a power under subsection (1), or
 - (b) refuses or fails, without reasonable excuse, to comply with a requirement made under subsection (4),
commits an offence.
- (8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) In this section—
 - “food” has the meaning given in section 1 of the Food Safety Act 1990;
 - “immigration offence” means an offence under any of the Immigration Acts;
 - “immigration officer” means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971;
 - “premises” includes a vehicle or vessel.”

Amendments to Part 2 of the 1982 Act

4.—(1) Part 2 of the Civic Government (Scotland) Act 1982 (licensing and regulation- particular activities) is amended as follows.

- (2) In section 42 (late hours catering licences) after subsection (2) insert—

“(2A) An individual who is resident in the United Kingdom may not apply for a late hours catering licence unless the individual is entitled to work in the United Kingdom.

(2B) Section 42A makes provision for the purposes of subsection (2A) about the circumstances in which a person is entitled to work in the United Kingdom.”

(3) After section 42 insert—

“42A Persons entitled to work in the United Kingdom

(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 using premises as mentioned in section 42(1).

(2) Where an individual is on immigration bail within the meaning of Part 1 of Schedule 9 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.”

Amendments to Schedule 1 to the 1982 Act

5.—(1) Schedule 1 (licensing - further provisions as to the general system) to the 1982 Act is amended as follows.

(2) In paragraph 2 (notice of applications) after sub-paragraph (1) insert—

“(1A) A licensing authority shall, as soon as an application for the grant or renewal of a late hours catering licence is made to them, send a copy of the application to the Secretary of State.”

(3) In paragraph 5 (functions of licensing authority in relation to application for licence) after sub-paragraph (6) insert—

“(6A) In the case of a relevant objection or representation made by the Secretary of State in relation to an application for the grant or renewal of a late hours catering licence, notification shall be made under sub-paragraph (5)(c) within 7 days of the decision to be notified by sending written notice of the decision to the Secretary of State.”

(4) In paragraph 8 (duration of licences), in sub-paragraph (8) (provisions to which paragraph 8 is subject), after “8A” insert “, 8B”.

(5) After paragraph 8A insert—

“Late hours catering licences for persons subject to immigration control

8B.—(1) Sub-paragraph (2) applies if—

- (a) a late hours catering licence is to be granted to a person who has been granted leave to enter or remain in the United Kingdom for a limited period (“the leave period”),
- (b) the person’s leave has not been extended by virtue of section 3C of the Immigration Act 1971 (continuation of leave pending variation decision), and

- (c) apart from sub-paragraph (2), the period for which the licence would have had effect would have ended after the end of the leave period.
- (2) The licensing authority which grants the licence must specify a period in the licence as the period for which it has effect; and that period must end at or before the end of the leave period.
- (3) Sub-paragraph (4) applies if—
 - (a) a late hours catering licence is to be granted to a person who has been granted leave to enter or remain in the United Kingdom for a limited period, and
 - (b) the person’s leave has been extended by virtue of section 3C of the Immigration Act 1971 (continuation of leave pending variation decision).
- (4) The licensing authority which grants the licence must specify a period in the licence as the period for which it has effect; and that period must not exceed six months.
- (5) A late hours catering licence ceases to have effect if the person to whom it was granted—
 - (a) ceases to be entitled to work in the United Kingdom at a time when the person is resident in the United Kingdom, or
 - (b) becomes resident in the United Kingdom without being entitled to work in the United Kingdom.
- (6) Section 42A (persons entitled to work in the United Kingdom) applies for the purposes of sub-paragraph (5) as it applies for the purposes of section 42(2A).
- (7) If a licence granted in accordance with sub-paragraph (2) or (4) expires, the person to whom it was granted must, within the period of 7 days beginning with the day after that on which it expired, return the licence to the licensing authority.
- (8) If sub-paragraph (5) applies to a licence, the person to whom it was granted must return the licence to the licensing authority which granted the licence within the period of 7 days beginning with the day after the day on which the person—
 - (a) ceased to be entitled to work in the United Kingdom, or
 - (b) became resident in the United Kingdom,
 as the case may be.
- (9) A person who, without reasonable excuse, contravenes sub-paragraph (7) or (8) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (10) This paragraph applies in relation to the renewal of a licence as it applies in relation to the grant of a licence.”
- (6) In paragraph 11 (suspension and revocation of licences) in sub-paragraph (2A) (suspension and revocation of certain licences on immigration grounds) for “or a private hire car driver’s licence” substitute “, a private hire car driver’s licence or a late hours catering licence”.
- (7) In paragraph 18 (appeals) in sub-paragraph (8A) (sheriff may not consider immigration issues on certain appeals) for “or a private hire car driver’s licence” substitute “, a private hire car driver’s licence or a late hours catering licence”.

PART 3

TRANSITIONAL PROVISION

6.—(1) Subject to paragraph (2), an amendment made by paragraph (2) of regulation 4 or paragraph (2), (3), (4) or (5) of regulation 5 does not apply in relation to an application for a licence made before the coming into force of these Regulations or a licence granted in response to such an application.

(2) Paragraph (1) does not prevent an amendment made by paragraph (2) of regulation 4 or paragraph (2), (3), (4) or (5) of regulation 5 from applying in relation to—

- (a) an application for the renewal of a licence where that licence was granted before the coming into force of these Regulations, or
- (b) a licence renewed in response to such an application.

7.—(1) Subject to paragraphs (2) and (3), the amendment made by paragraph (6) of regulation 5 applies in relation to a licence granted before or after the coming into force of these Regulations.

(2) The amendment made by paragraph (6) of regulation 5 applies in relation to a conviction for an immigration offence only if the person in question has been convicted of that offence after the coming into force of these Regulations in respect of the person's conduct after that time.

(3) The amendment made by paragraph (6) of regulation 5 applies in relation to a requirement to pay an immigration penalty only if the person in question has been required to pay the penalty after the coming into force of these Regulations in respect of the person's conduct after that time.

Home Office
Date

Name
Minister of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply to Scotland and amend the Civic Government (Scotland) Act 1982 (1982 c. 45) (“the 1982 Act”) in so far as it contains provision relating to late hours catering. They make provision under section 34 of the Immigration Act 2016 (2016 c. xx) which has similar effect to the amendments made to the Licensing Act 2003 (2003 c. 17) by Schedule 3 to the 2016 Act in relation to late hours catering.

Regulation 3 amends Part 1 of the 1982 Act (licensing – general provisions) to insert a new section 6A which provides an immigration officer with the power at any time to enter and inspect premises for the purpose of determining whether an immigration offence is being committed in connection with the carrying on of late hours catering activities. The premises that may be entered and inspected are those in relation to which a late hours catering licence is in force or other premises in relation to which such a licence is not in force but where there are reasonable grounds to suspect that the premises have been used between 11 p.m. and 5 a.m. for the sale to or consumption by the public of food.

Regulation 4 amends Part 2 of the 1982 Act (licensing and regulation – particular activities) to provide that an individual who is resident in the UK may not apply for a late hours catering licence unless the individual is entitled to work in the UK. It also inserts into section 42 of the 1982 Act a definition of an individual who is entitled to work in the United Kingdom.

Regulation 5 amends Schedule 1 to the 1982 Act to require licensing authorities to notify the Secretary of State of applications for late hours catering licences and their decisions. It also makes provision for the duration of late hours catering licences and their cessation in the event that a licence holder who is resident in the United Kingdom ceases to be entitled to work in the United Kingdom.

Part 3 of the Regulations makes transitional provision.