

Excerpts taken from

Preventing illegal working in licenced premises and the Home Office role as a responsible authority in England and Wales

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The following excerpts relate to the ability of the Home Office to request a review of a premises following an issue around illegal working.

Requesting a review of a licence

Summary of a licence review

An application for a review of a premises or personal licence must be relevant to the promotion of one or more of the **licensing objectives** which, under the prevention of crime and disorder, includes the prevention of immigration crime and illegal working.

Immigration Enforcement (IE) may, therefore, request that an existing premises licence (except regulated entertainment only licences) be reviewed by the relevant licensing authority if there are concerns relating to immigration crime and illegal working in licensed premises. This also applies to licences issued before the Immigration Act 2016 came into force. Such a request is likely to follow an enforcement visit, data sharing with HM Revenue and Customs or the grant of a **compliance order** by a court (for which special arrangements apply). Following an Immigration Compliance and Enforcement (ICE) team enforcement visit, they will refer the case to the Intervention and Sanctions Directorate (ISD) Alcohol and Late Night Refreshment team (ALNR) team as appropriate, based on the ICE team's assessment of the criteria set out below.

In the case of premises licences, the immigration offences and penalties leading to a request for a review may pre-date 6 April 2017. For personal licence reviews, the offences and penalties must have occurred on or after 6 April 2017.

When to request a review

The following factors should always trigger an assessment by the ALNR team or relevant ICE team of whether it would be appropriate for ICE to request a review of a personal or premises licence

The licence holder:

- has no lawful immigration status/right to work (if the licence was granted before 6 April 2017)
- has been convicted of an offence of employing an illegal worker under section 21 of the Immigration, Asylum and Nationality Act 2006
- has been required to pay a penalty, in particular:
 - a penalty under section 15 of the 2006 Act during the last 3 years ending on the date of the licence application

- a penalty at any time which they have failed to pay
- has, at any time, been convicted of an offence under any of the Immigration Acts - as defined by section 61(2) of the UK Borders Act 2007

In the case of disqualification by reason of immigration status, this course of action is relevant where a licence was issued before 6 April 2017, as licences granted prior to that date will not automatically lapse where they have no lawful status. In these circumstances, the onus will be on IE to inform the relevant licensing authority and request a review of the licence

Considerations for the review of a personal licence, premises licence, or both

In every case, apart from late night refreshment, there will be a personal and premises licence to be considered. IE must determine whether to:

- request a review of the premises licence
- request a review of the personal licence
- request a review of both the premises licence and the personal licence of the designated premises supervisor (DPS)

Premises licences

It is important to think about the following:

- revoking a premises licence will generally result in the closure of the business, which will impact lawful as well as unlawful workers
- revoking a personal licence may have a significant impact on the individual but only a limited impact on the business, particularly when the personal licence holder is not the DPS - where the personal licence holder is the DPS for the business, the premises licence holder may apply to vary the licence to appoint a different DPS
- is the seriousness of the illegal working or immigration crime identified such that the only appropriate remedy is to request that the premises licence be revoked; or can the risk be mitigated by the attachment of conditions
- a premises licence applies to specific premises and, therefore, evidence must focus on the prevention of crime or prevention of illegal working in those premises - consideration may also be given to any other evidence that will be relevant to the assessment of risk, including where a business has either:
 - shown wilful or systematic disregard for the law in respect of the employment of illegal workers at any other premises
 - generally been compliant, but has received penalties in other locations, perhaps by virtue of the size of its workforce, and there is evidence that the company has sought to address deficiencies that led to the employment of illegal workers. Such evidence is likely to mitigate against requesting a review, or it may be appropriate to consider requesting licensing conditions

- is there evidence that a business has been non-compliant in another legal entity, dissolved in order to evade sanctions, and re-emerged in another name (phoenixism) and continued its noncompliant activity - if so, evidence of phoenixism should be provided in the representations to the licensing authority to supplement the information about immigration offences and penalties (it will be necessary to establish a clear connection between the 2 businesses in order to produce this in evidence)
- the request for a review must be a proportionate response based on the individual facts of the case. It must be supported by sufficient disclosable evidence - this will be shared with the licensing authority, other responsible authorities, the licence holder, and be presented at a hearing open to the public

Conditions, suspension and revocation

Conditions

Conditions can only be requested in relation to a premises licence, not a personal licence.

Ask the question: can the risk of immigration crime be sufficiently mitigated by conditions being placed on the licence?

Conditions must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case. Appropriate conditions could include evidencing to immigration officials that they are complying with requirements, for example:

- the employer must demonstrate that they are carrying out checks relating to the right to work of their employees at the premises at [insert address of premises] and any prospective employees before entering into a contract of employment
- any copies of documents retained by the employer as a result of conducting checks relating to the right to work must be stored securely by the employer at the premises or a digital copy be immediately accessible from the premises for ease of inspection by immigration officials
- the employer, or any person appearing to represent the employer, must be able to produce on demand documents relating to the right to work at the request of an immigration officer who enters the premises to carry out an inspection under section 179 (1A) of the 2003 Act

Conditions may be appropriate where illegal working is identified but the employer has a statutory excuse, the employer has not heeded earlier warnings from IE, or the civil penalty is of a low value.

Payment of an outstanding penalty may not be requested as a licence condition. However, it may be referred to when making a request for a review.

Suspension

Suspension is possible in relation to premises licences, usually taken together with conditions. It is not common for a licensing authority to suspend a personal licence. IE may consider that it is necessary to request the suspension of a premises licence in order for the licence holder to address concerns they have identified at the premises and put systems in place to prevent illegal working occurring in the future. Accordingly, they may request a review with a request to suspend the premises licence, plus adding conditions such as mandating right to work checks on all existing staff and new staff.

Revocation of a licence

IE will request a review of a licence and its revocation, in circumstances in which it is considered that the risk of immigration crime and illegal working cannot be otherwise mitigated. If a premises licence is revoked, this is likely to cause the closure of the business.

It will also be the appropriate remedy in relation to a personal licence.

Serious and or repeat non-compliance may include:

- multiple civil penalties or a single penalty for a large amount
- unpaid civil penalties
- unspent immigration offences or other relevant offences
- phoenixism
- breach of a compliance order under section 38 and schedule 6 of the 2016 Act

An escalated approach

The following approach should be considered when deciding whether to initiate a licence review. It should be noted that it is not the intention that the steps below should be followed sequentially; there may be cases where the severity or scale of non-compliance (including issues other than illegal working) will require consideration of action to be taken without all preceding steps having been taken already. Such as:

- during a joint working operation led by IE; intel received prior to the visit and interviews conducted by officers identified an employee had history for drug dealing and there were concerns that the premises is being used for that purpose
- the fire exits were locked, and it was identified during an illegal working interview that the owner had told the employee to keep them locked whilst he was there on their own for security purposes
- an employee confirmed that they were the only employee working at a premise and had sole responsible for the day to day running of the premise including the sale of alcohol
- ICE officers identified that during illegal working interviews, the premise licence holder was employing underage individuals

Serious safeguarding concerns, breaches to conditions or strong evidence to show failures in meeting licensing objectives identified by ICE teams during a visit, should be considered for

licence review. The primary purpose of a review is to act as a deterrent to prevent further breaches. It can also prevent any licensable activities which are causing concern from happening in future.

At all times, ICE teams are encouraged to discuss the steps they are taking in respect of specific premises with a licensing authority and other responsible authorities, before taking a decision on the most appropriate response in respect of a personal or premises licence. In all cases where illegal working is identified on a visit, and there is no evidence that the employer has a statutory excuse including when it is a first offence, the ICE team should issue a Referral Notice to the employer. The ICE team should advise the employer about the impacts that further non-compliance may have on their ability to carry out a licensable activity. If a further enforcement visit takes place at the business within a 3-year period and further illegal working offences discovered, (where there has been no change in ownership or legal entity of the business and the licence holder remains the same person) the ICE team should again issue a Referral Notice. A review of the licence should then give due consideration to seeking the application of conditions to the premises licence to encourage compliance. Dependent on the severity of the offence they may wish to consider requesting the suspension or revocation of the licence.

There may be occasions where the ICE team have visited for a third occasion within a 3-year period and further offences identified, where there has been no change in ownership or legal entity of the business and the licence holder remains the same person. In these cases of persistent non-compliance, the ICE Team must consider issuing a closure notice to temporarily close the business. In considering who the licence has transferred to, ensure attention is paid to a connected person, to rule out any abuse. Unless the notice is cancelled, issue of a closure notice must always be followed by an application to the relevant magistrates' court within the statutory timeframe for a compliance order, to apply conditions on the business. A compliance order automatically triggers the review of a licence; the court are obliged to inform the local licensing authority who will carry out the review. In practice, the ICE team will wish to follow up with the local licensing authority and the ISD ALNR to ensure the licence review is progressed.

If, following a compliance order, a further visit is conducted and breaches of the order identified, the ICE team should make a referral to their local Criminal and Financial Investigations team to consider a criminal investigation into the breach of the order. If no action has previously been taken regarding the licence, then a further review must be requested following consultation with the local CFI team.

It is important that there is a clear rationale as to why we are seeking a review of a premise licence and that we can evidence that we have engaged with an employer or premises or personal licence holder to try and modify their behaviour through education, warning and sanction. There is no need to evidence this type of engagement where serious non-compliance has been identified from the outset. IE checklists are widely available which set out what a responsible employer should ask for ahead of employing any person in order to demonstrate 'due diligence' and avoid liability for employing an illegal worker.

Where a review is requested and conditions are imposed on licensed premises they need to be proportionate and link to the licensing objectives and need to serve a purpose to fit in with the licensing objectives. IE conditions should relate to the prevention of illegal working in licensed premises.

The above considerations should be made and recorded on Pronto as this will provide important evidence in any licence review. This will show that the employer has failed to comply with their responsibilities or conditions imposed upon them and that the review of the licence is, therefore, proportionate and necessary to prevent illegal working in licensed premises; which is part of the licensing objective of preventing crime and disorder.