

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO LICENSING COMMITTEE

Agenda Item No. 10

meeting date: 31 JANUARY 2017
 title: IMPLEMENTATION OF IMMIGRATION ACT 2016
 submitted by: CHIEF EXECUTIVE
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1 PURPOSE

1.1 To inform Committee of the implementation of the Immigration Act 2016.

1.2 Relevance to the Council's ambitions and priorities

- Community Objectives - }
- Corporate Priorities - } Consideration of these issues will promote the Council's aim to be a well-managed Council.
- Other Considerations - }

2 BACKGROUND

Private Hire and Hackney Carriage Licensing

2.1 Section 36 and Schedule 5 of the Immigration Act 2016 embed immigration safeguards into the existing private hire and hackney carriage licensing regime. The provisions came into effect on 1 December 2016 and had the following effect:

- Prohibit the issue of a driver or operator licence to someone who does not have the right to live and work in the UK.
- Where someone has time-limited permission to work in the UK, which is shorter than the statutory period for a licence, the duration of the licence must not exceed this.
- Immigration offences and penalties are added to the list of grounds on which licences can be suspended or revoked.
- It is an offence not to return a licence where it has been revoked on immigration grounds.

2.3 The Council as a Licensing Authority must discharge its duty imposed Act by undertaking an immigration check and must be satisfied that the applicant is not disqualified by their immigration status from holding a licence before the licence is

issued, extended or renewed. Checks must also be carried out to ensure that the documentation provided is genuine.

Licensing Act 2003

2.4 The provisions of the Act which relate to the Licensing Act 2003 are contained in Schedule 4. They have not yet been brought into force but the home office has indicated that they will come into force in Spring 2017. The main effects of these provisions will be that:

Premises Licence Applications

- Individuals resident in the UK will not be able apply for a premises unless they are also entitled to work in the UK.
- The Secretary of State will become a Responsible Authority where the premises is selling or proposes to sell alcohol by retail or provide late night refreshment.
- Premises licences will lapse if the licence holder ceases to be entitled to work in the UK whilst resident in the UK (or becomes resident without being entitled to work).
- Individuals resident in the UK will not be able apply for a licence transfer if the licence authorises the sale of alcohol or late night refreshment (neither may they give an interim authority notice) unless the individual is entitled to work in the UK.
- The Secretary of State will need to be served with a copy application (where the premises sells alcohol by retail or provides late night refreshment) and will have 14 days to object if satisfied that the exceptional circumstances of the case are such that granting the application would be prejudicial to the prevention of illegal working in licensed premises.
- In a hearing convened due to the Secretary of State's objection the Licensing Authority must reject the transfer application if it considers it appropriate for the prevention of illegal working in licensed premises to do so.

Personal licences

- Those not entitled to work in the UK will not be granted a personal licence.
- Immigration offences (under schedule 4 paragraph 7A Licensing Act 2003 i.e. an offence under any of the Immigration Acts) will become relevant for personal licences.
- Immigration penalties contrary to s15 Immigration, Asylum and Nationality Act 2006 or s23 Immigration Act 2014 also become disclosable subject to certain exceptions.

- Secretary of State will need to be served a copy of the application if the applicant has an unspent immigration offence, foreign offence equivalent or has been required to pay an immigration penalty. The Secretary of State will have 14 days to object to application.
- In a hearing convened due to the Secretary of State's objection, the Licensing Authority must reject the application if it considers it appropriate for the prevention of illegal working in licensed premises to do so.
- There will be a new duty for personal licence holders to inform the Licensing Authority if required to pay an immigration penalty.
- A personal licence will cease to have effect if the holder ceases to be entitled to work in the UK.
- Immigration officers will be able to enter premises (selling alcohol or providing late night refreshment) with a view to seeing whether an offence under any of the Immigration Acts is being committed in connection with the carrying on of the licensable activity.
- The Act creates new powers of illegal working closure notices and illegal working compliance orders. An Illegal Working Closure Notice will be able to be issued by a Chief Immigration Officer (or more senior) in certain circumstances but principally due to an illegal worker being at the premises (which is further defined in the Act). The Notice will prohibit for a period specified:
 - access to the premises other than by a person who habitually lives on the premises; and
 - paid or voluntary work being performed on the premises, except where so authorised.
- The Closure Notice will be able to last up to 24 hours or up to 48 hours if issued by an immigration inspector (or higher).
- Unless cancelled, the Court must within 48 hours hear an application for an Illegal Working Compliance Order. There are several options available to the Court (including up to a 14 day adjournment of the hearing), one of which will include prohibiting or restricting access to the premises.
- An Illegal Working Compliance Order will be able to last for 12 months albeit they may be extended but cannot be in force for a period exceeding 24 months in total.

3 ISSUES

- 3.1 The Council's Solicitor attended training with the Home Office before the implementation of the provisions on private hire and hackney carriage licensing and subsequently provided training to the Administration Assistant (Licensing) who processes the applications. The application forms and the guidance notes have been amended to

reflect the new requirements. In addition, in order to avoid delays the Council has written to all applicants for renewal informing them of the documentary evidence which they will need to be provided. To date the system has worked well.

3.2 The Council's solicitor and the Administration and Licensing (Alcohol & Entertainment) Officer will attend any Home Office training offered on the provision relating to the Licensing Act 2003 before those provisions come into force and will put in place the procedures required by the Act once it is implemented.

4. RISK ASSESSMENT

4.1 The approval of this report may have the following implications

- Resources – Resources will be required to implement the requirements of the Act
- Technical, Environmental and Legal – Improved control of licence holders should improve public safety.
- Political – No implications identified.
- Reputation – Improved public safety will enhance the Council's reputation.
- Equality & Diversity – no implication identified

5. **CONCLUSION**

5.1 Note the contents of this report.

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BACKGROUND PAPERS

For further information please ask for Mair Hill, extension 3216

REF: MJH/Licensing Committee/31 January 2017