



Home Office

Premises Licence Review

**Flames Pizzeria
Mr Okkes Ozmicco
7 New Market Street
Ulverston, Cumbria,
LA12 7LQ**

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Outline of the Circumstances leading to the Review Application

Summary

- 1.1 On Thursday 15th October 2020 an enforcement visit was carried out at: Flames Pizzeria situated at: 7 New Market Street, Ulverston, LA12 7LQ. The visit was conducted by: [REDACTED] Immigration Compliance and Enforcement (ICE) Team.
- 1.2 The team were led by Officer in Charge (OIC) Immigration Officer [REDACTED] who conducted the visit on the basis that at least one individual was suspected of working at the premises when they were disqualified from doing so, as a result of their Immigration Status.
- 1.3 Checks with Companies House established that NM Catering LTD, which was incorporated on 30/12/2019 is currently operating at the address. The director of NM Catering LTD is listed as [REDACTED]. Further checks with South Lakeland District Council showed that the premises had previously held a licence for the 'provision of late night refreshment', but this had been suspended due to non-payment of fees. However, the businesses own website showed that the business was operating beyond 23:00 hours and was serving hot food, providing reasonable grounds that they were continuing to conduct a licensable activity.
- 1.4 As a result of this information Her Majesty's Inspector [REDACTED] gave authorisation for Immigration Officers to enter the premises under Section 179 of the Licensing Act 2003, as amended by the Immigration Act 2016.
- 1.5 In total, seven persons were encountered on the visit. Checks conducted on Home Office systems of the details provided by these individuals, identified that two individuals were confirmed to have reasonable grounds for suspecting that they were working at the premises when they did not have permission to do so. These were;
 - [REDACTED]
 - [REDACTED]
- 1.6 The premises were already well known to the Home office due to a previous visit that was carried out in 2019 where there were allegations of illegal working which resulted in an illegal worker being encountered at the premises.
- 1.7 This previous visit was conducted on 5th September 2019 at: Karamurat Ltd although, the company was trading under the same name of Flames

Pizzeria, situated at: 7 New Market St, Ulverston LA12 7LQ. It should be noted that the same individual, [REDACTED] was encountered on both visits, the visit in 2019 as well as the more recent visit of 2020.

- 1.8 Checks on Home Office systems found that after previously being removed from the United Kingdom on 5th April 2013, [REDACTED] had illegally entered the United Kingdom in 2019 and as a result of his immigration status he had no permission to work in the United Kingdom.
- 1.9 During the 2019 visit, officers conducted Right to Work interviews with [REDACTED] and [REDACTED], who was listed on Companies House as being the sole director of Karamurat Ltd which trades as Flames Pizzeria at 7 New Market St, Ulverston LA12 7LQ.
- 1.10 Following this, a Civil Penalty Referral Notice was issued to the business on the basis that they were believed to be employing an illegal worker on the 23rd September 2019. The Civil Penalty Compliance Team issued a penalty notice, for the value of £10,000, to Karamurat Ltd.
- 1.11 Checks conducted on 14th October 2020 show that this penalty was maintained at £10,000 on 16th October 2019 following an objection. No appeal was received and, as of 14th November 2019, the case is now appeal rights exhausted and the penalty is still outstanding.
- 1.12 To date, the business has not paid any money towards the penalty. Checks conducted on Companies House records on 8th October 2020 show that two businesses are currently registered at the address and listed as active. Karamurat Ltd and NM Catering Ltd. A search of the premises under Section 47 of the Immigration Act 2016 located a number of recent utility bills, bank statements and other documentation addressed separately to Karamurat Ltd and NM Catering Limited.
- 1.13 Whilst it is acknowledged that the company operating at the premises may have changed and so has the director, numerous factors support the view that the business has engaged in “phoenixism” in order to avoid its liabilities.
- 1.14 The new business, NM Catering Ltd, was only incorporated on 30th December 2019, which is approximately 6 weeks after the appeal against the imposition of the £10,000 Civil Penalty were exhausted. Since this “new” company was incorporated, there does not appear to have been any fundamental change to the business operating at the address, with the business still trading as a takeaway under the name “Flames Pizzeria”, as it was on the previous Immigration Enforcement visit on 5th September 2019.
- 1.15 Furthermore, one male employee who stated he had worked at the premises for 3 years, [REDACTED], stated the owner of the business was an individual called [REDACTED] but, that he had only seen him on a few occasions. Checks of Companies House records conducted on 16th

October 2020 show that an [REDACTED] (same family name as the director of NM Catering) was previously the director of 2 companies registered and also the premises licence holder at, 7 New Market Street, Ulverston, England, LA12 7LQ since 2015. One of which was called CORLU Ltd which was dissolved on 6th June 2017. The business, CEMRI Ltd, was dissolved on 14th August 2018.

- 1.16 [REDACTED], a [REDACTED] was initially encountered by Home Office Immigration Enforcement on 31st December 2019 having recently crossed the English Channel and on the same day he was served paperwork as an illegal entrant into the United Kingdom. On the same day he submitted a claim for asylum in the United Kingdom and granted Secretary of State Immigration Bail. One of the conditions attached to this bail was that he was prohibited from taking up employment and this asylum claim remains outstanding.
- 1.17 [REDACTED] was encountered in the rear preparation area, not accessible to members of the public, at Flames Pizzeria, and was noted as wearing a white polo shirt with the embroidered "Flames" logo on it and a black apron. When interviewed, [REDACTED] stated that he had helped out at the premises for 1 or 2 weeks, cleaning and stacking boxes. In return for this "help", [REDACTED] stated that he received food and drink as remuneration. Based on this interview and the observations of officers, including his clothing and the fact that he was in an area that you would expect only employees of the business would be present, it was believed that [REDACTED] was working at the premises when he did not have permission to do so.
- 1.18 Based on the above, there are reasonable grounds to believe that, whilst the business operating at the premises has changed on paper, this has primarily been done to avoid paying the significant Civil Penalty placed upon the business as a result of it being found to have previously employed an individual who did not have permission to work in the United Kingdom.

Occurrence

- 1.19 On 15th October 2020 entry to the premises was gained at approximately 21:00 hours under Section 179 of the Licensing Act 2003 via the unlocked main entrance door. The team was led by, Officer in Charge (OIC) Immigration Officer [REDACTED], in company with, [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. In addition to this, ICE officers were accompanied by two Police officers from [REDACTED]. A notice was served to an employee, [REDACTED], who was serving at the front counter at the time of the Enforcement visit, advising him of why the officers were there.
- 1.20 Subsequent checks on Home Office systems confirmed that [REDACTED] applied for and had been granted settlement in the United Kingdom, as a European Union National under the European Union Settlement Scheme. He was later interviewed by [REDACTED] who thought having worked at

Flames Pizzeria for three years would possibly have information about one of the illegal workers encountered.

- 1.21 On the same visit, ██████████ was encountered again in a rear food preparation area at Flames Pizzeria, he was found to be wearing a white polo shirt and black and red apron, both of which bore “Flames” branding. When interviewed, ██████████ stated that he helped out at the business checking the orders for the delivery driver. In return for this “help” ██████████ stated that the male he claimed gave him the job, ██████████, bought him clothes and shoes and that the chef gave him food.
- 1.22 ██████████ and ██████████ conducted Right to Work interviews with ██████████ and ██████████ respectively in order to fully establish the circumstances of their presence at the premises. In addition to this, ██████████ interviewed ██████████, as he was deemed to be an individual with responsibilities at the premises.
- 1.23 Once all these interviews were concluded ██████████ served a Civil Penalty Referral Notice on the business. This notice informed the business that they were liable for a potential Civil Penalty of up to £20,000 per illegal worker as there were reasonable grounds to suspect that the business had employed multiple individuals who were prohibited from performing the role that they were performing as a result of their immigration status. To date this Civil Penalty Referral is still under investigations with the Civil Penalty Compliance Team.
- 1.24 ██████████ was encountered at the rear of the premises in the preparation area, not accessible to members of the public, and was noted to be wearing a white polo shirt with the embroidered “Flames” logo on it and a black apron. When interviewed, ██████████ stated that he had helped out at the premises for 1 or 2 weeks, cleaning and stacking boxes. In return for this “help”, ██████████ stated that he received food and drink as remuneration.
- 1.25 Therefore, out of the seven members of staff that were present, two were identified as working illegally. As detailed below, one of these individuals, ██████████, had previously been encountered working illegally at the premises. As a result, it is evident that the owners have shown disregard to Immigration law by continuing to employ staff with no permission to work in the UK.

At 21:09 hours an immigration status interview was conducted by ██████████ with ██████████. The interview was conducted in English a language that ██████████ confirmed he understood.

██████████

██████████: How long have you worked here?
██████████: Three years
██████████: Who is the boss?
██████████: ██████████
██████████: What nationality is ██████████?
██████████: ██████████
██████████: How many times have you seen ██████████?
██████████: Maybe two or, three times
██████████: So, in three years you have only seen ██████████ two or, three times?
██████████: Yes
██████████: Who has the keys to the door?
██████████: ██████████.
██████████: How long has ██████████ worked here?
██████████: One two or, three years
██████████: Who gave him the job here?
██████████: ██████████
██████████: Who pays you?
██████████: Sometimes ██████████, sometimes man who I don't know his name.
██████████: What is ██████████ job?
██████████: ██████████ makes everything, Pizza, Grill and he cleans.
██████████: When was the las time you were paid?
██████████: I have not been to work for two weeks. I will be paid on Sunday. I don't know how long ██████████ has worked this time.
██████████: Does ██████████ live in ██████████?
██████████: Yes.
██████████: Are you happy with how much you get paid?
██████████: Yes.
██████████: If customers pay cash, who takes the money at the till?
██████████: ██████████
██████████: Does ██████████ live alone?
██████████: No, with a ██████████ who works here too.

1.26 The interview was concluded at approximately 18:35 hours, the details of which were recorded contemporaneously in ██████████ digital pocket notebook.

Interview with ██████████ conducted by ██████████ as follows: The interview was conducted in English a language that ██████████ confirmed he understood.

██████████: How long have you been working here?
██████████: 2 days
██████████: What is your job role/ what are your duties?
██████████: Check the orders for the delivery driver
██████████: What days/ hours do you work each week?
██████████: 4pm until 10pm, same hours last night
██████████: When are you next due to work
██████████: Not going to come back after today
██████████: who gives you your uniform?
██████████: I just come in and help myself, it's in the bag at the back- same both nights.
██████████: Who gave you this job (name and role in business)?
██████████: The boss gave me the job
██████████: How did he find out about the job
██████████: I called the boss and asked him for help, ██████████ said come down and help and I will help you.
██████████: What is the boss's name?
██████████: ██████████
██████████: What does ██████████ ask you to do?
██████████: Asks me to check the orders for the delivery- check the prices.
██████████: How are you paid (money, accommodation, food)?
██████████: ██████████ doesn't pay me- he buys me clothes and shoes and the chef makes me some food.
██████████: Where are you going to sleep tonight?
██████████: I am going back to my brothers- ██████████ (unsure of rest of address)
██████████: Have you been given any food/ accommodation?
██████████: I get food off the chef and I stayed last night at ██████████
██████████: What name does the employer know you as?
██████████: He calls me ██████████
██████████: Does your employer know you're not allowed to work in the UK?
██████████: He didn't ask me any questions
██████████: Where you asked for any documents
██████████: No.
██████████: Did the boss check with the Home Office?
██████████: I don't think so.
██████████: How have you been supporting yourself before today?
██████████: My brother has been looking after me
██████████: What were you doing here last year?
██████████: I was in the back- I tried to leave I wasn't working

1.27 Interview concluded at 22:30hrs and ██████████ confirmed that he had understood all the questions and that the details are true and correct. Subject had refused to provide a signature. Based on his interview and the observations of officers, including his clothing and the fact that he was in an area that you would expect only employees of the business to be present, it

was believed that [REDACTED] was working at the premises when he did not have permission to do so and was escorted off the premises.

- 1.28 At 21. 36 hours, interview with [REDACTED] was conducted by [REDACTED], as follows: The interview was conducted in English a language that [REDACTED] confirmed he understood.

[REDACTED]

[REDACTED]: How long have you been working here?

[REDACTED]: 1, or 2 weeks

[REDACTED]: What is your job role/ what are your duties?

[REDACTED]: Clean and stack boxes

[REDACTED]: What days/ hours do you work each week?

[REDACTED]: When I'm hungry I call my friend and come and help

[REDACTED]: Who gave you this job (name and role in business)?

[REDACTED]: My friend [REDACTED]

[REDACTED]: Who tells you what days/ hours to work?

[REDACTED]: [REDACTED]

[REDACTED]: How are you paid (money, accommodation, food)

[REDACTED]: Only food and drinks

[REDACTED]: Who pays you?

[REDACTED]: [REDACTED]

[REDACTED]: What name does the employer know you as?

[REDACTED]: [REDACTED] calls me [REDACTED]

- 1.29 Interview with [REDACTED] was concluded.

- 1.30 [REDACTED] confirmed that he had understood all the questions and that the details are true and correct but, refused to provide a signature. He was then escorted from the premises.

Reasons for Review

- 2.1 Whether by negligence or wilful blindness illegal workers were engaged in activity on the premises, yet it is a simple process for an employer to ascertain what documents they should check before a person is allowed to work. It is an offence to work when a person is disqualified to do so, and such an offence can only be committed with the co-operation of a premises licence holder or its agents. It is also an offence to employ an illegal worker where there is reason to believe this is the case.
- 2.2 The case of East Lindsey District Council v Hanif (see 8.11) determined that in such circumstances, even without a prosecution, the crime prevention objective is engaged. The statutory Guidance issued under the Licensing Act provides that certain criminal activity (in particular employing illegal workers) should be treated particularly seriously and it is envisaged that the

police will use the review procedures effectively to deter such activities and crime.

- 2.3 Home Office (Immigration Enforcement) submits that for commercial reasons those engaged in the management of the premises employed illegal workers and a warning or other activity falling short of are view is in appropriate; this is why Home Office (Immigration Enforcement) has proceeded straight to review.

Outcome Sought

- 2.4 Home Office (Immigration Enforcement) asks that the premises licence is revoked. Merely remedying the existing situation (for instance by the imposition of additional conditions or a suspension) is insufficient to act as a deterrent to the licence holder and other premises' licence holders from engaging in criminal activity by employing illegal workers and facilitating disqualified immigrants to work illegally.
- 2.5 This submission and appended documents provide the licensing subcommittee with background arguments and information pertinent to that contention. These provide the sub-committee with a sound and defensible rationale as to why it should revoke the licence.
- 2.6 It is in such circumstances as this review application that a respondent may suggest that conditions are imposed which would prevent a reoccurrence of the employment of illegal workers in the future; an argument that the subcommittee should take remedial and not punitive action.
- 2.7 However, since 2006 (with the introduction of the Immigration, Asylum and Nationality Act 2006) employers have had a duty to conduct checks to ensure employees and potential employees are not disqualified from working. Only by completing the required checks and maintaining records of such checks can an employer demonstrate a 'statutory excuse' and evade liability for a civil penalty issued by Home Office (Immigration Enforcement). In order to protect themselves, reputable employers have been conducting these checks since 1996 when it first became a criminal offence to employ illegal workers.
- 2.8 The 2006 Act already imposes duties and responsibilities on a company or individual seeking to employ a person—whether in the licensed trade or otherwise - to conduct right to work checks
- 2.9 In seeking revocation, Home Office (Immigration Enforcement) has considered and rejected conditions as an alternative, in part because this is specifically addressed paragraph 1.16 of the Guidance, viz: "(...) Licence conditions should not duplicate other statutory requirements or other duties,

or responsibilities placed on the employer (my emphasis) by other legislation”.

- 2.10 Conditions requiring an employer (or its agent) to undertake checks that are already mandated and where advice is readily available and clearly set out for employers, keep copies of documentation and to restrict employment until these checks are made etc. replicate the requirements of the 2006 Act and should be discounted.
- 2.11 Home Office (Immigration Enforcement) contends that a licence holder who has himself or through his agents negligently or deliberately failed to conduct right to work checks which have been a requirement since 2006 should not be afforded an opportunity to do so until caught and then merely be asked to do what they should have been doing already. Deterrence and not mere remedy is appropriate and is supported by case law (as set out within section 8 of this submission).
- 2.12 Respondents who fail to convince a subcommittee that the imposition of conditions to undertake proper right to work checks is a suitable alternative to a deterrent outcome often point to the option of suspension of a licence; pointing out that this may be a suitable punitive response instead which will deter others.
- 2.13 Often this will include claims that the business has ‘learnt its lesson’ and that since its criminal activity has been discovered it has reconsidered its position, brought in new procedures, ‘parachuted in’ consultants and new managers etc. On occasion it is hinted that the respondent will ‘accept’ a suspension as an alternative to revocation, assuaging an authority’s concern that an appeal may otherwise be launched. This is not a deterrent - a suspension merely warns other potential perpetrators that they may trade illegally until caught and then suffer only a brief hiatus in carrying out licensable activity before continuing with it. The risk of being caught is low so the consequence of being caught must be stiff in order to qualify as deterrence.
- 2.14 Home Office (Immigration Enforcement) would counter such claims and point to the continuing changes made to both immigration law and the Guidance (paragraphs 11 .26 — 11 .28) which point to a requirement to send a clear message to potential illegal immigrants that UK authorities will do all they can to prevent them finding illegal employment and a similar message to employers that those employing illegal workers will face severe disruption and penalties. There are simple processes (set out in section 5 of this submission) to avoid the hire of illegal workers and the legislative thrust is in avoiding the occurrence in the first place—not remedying the situation once discovered.

- 2.15 If it were not for criminally minded or complicit employers; illegal workers would not be able to obtain a settled lifestyle and deprive legitimate workers of employment. The use of illegal labour provides an unfair competitive edge and deprives the UK economy of tax revenue. Illegal workers are often paid below the minimum wage (itself an offence) and National Insurance payments are not paid. The main draw for illegal immigration is work and low-skilled migrants are increasingly vulnerable to exploitation by criminal enterprises; finding themselves in appalling accommodation and toiling in poor working conditions for long hours for little remuneration.
- 2.16 A firm response to this criminal behaviour is required to ensure that the licence holder and/or its agents are not allowed to repeat the exercise and in particular, in the interests of the wider community to support responsible businesses and the jobs of both UK citizens and lawful migrants. It is also required to act as a deterrent to others who would otherwise seek to seek an unfair competitive advantage, exploit workers and deny work to the local community, evade the payment of income tax and (unlawfully) inflate their profits to the expense of others.

Immigration Offences

- 2.17 Illegal workers are those subject to immigration control who either do not have leave to enter or remain in the UK, or who are in breach of a condition preventing them taking up the work in question. It is an employer's responsibility to be aware of their obligations and ensure they understand the immigration landscape to avoid the risk of prosecution, the imposition of a civil penalty or their vocation/suspension of their premises licence.
- 2.18 Since 1996 it has been unlawful to employ a person who is disqualified from employment because of their immigration status. A statutory excuse exists where the employer can demonstrate they correctly carried out document checks, i.e. that they were duped by fake or forged documents.
- 2.19 The Immigration Act 2016 came into force in July 2016 and its explanatory notes state that *"these offences were broadened to capture, in particular, employers who deliberately did not undertake right to work checks in order that they could not have the specific intent required to 'knowingly' employ an illegal worker"*.
- 2.20 Since 2016 an employer may be prosecuted not only if they knew their employee was disqualified from working but also if they had reasonable cause to believe that an employee did not have the right to work: what might be described as wilful ignorance where either no documents are requested, or none are presented despite a request. This means an offence is committed when an employer 'ought to have known' the person did not have the right to work.

- 2.21 Since 2016 it has also been an offence to work when disqualified from doing so. It is obvious that without a negligent or wilfully ignorant employer, an illegal worker cannot work. Such an employer facilitates a criminal offence and Home Office (Immigration Enforcement) highlights this as relevant irrespective of whether a civil penalty is imposed, or a prosecution launched for employing an illegal worker.
- 2.22 In this context, under section 3(1)(C)(i) Immigration Act 1971 (as amended by the 2016 Act) restrictions are not limited simply to employment (i.e. paid work) but now includes all work.
- 2.23 Thus, an individual with no right to work in the UK commits offences if they undertake paid or unpaid work, paid or unpaid work placements undertaken as part of a course etc. are self-employed or engage in business or professional activity. For instance, undertaking an unpaid work trial or working in exchange for a nonmonetary reward (such as board and lodging) is working illegally and is a criminal offence committed by the worker and facilitated by the 'employer'.

Steps to Avoid the Employment of an Illegal Worker

- 2.24 It is a straightforward process for any employer, no matter how small, to prevent themselves employing an illegal worker. If an employer has failed to take even the most basic steps then Home Office (Immigration Enforcement) contends they have chosen to remain ignorant of the immigration status of their workforce and no amount of potential imposed conditions is sufficient, in our opinion, to avoid the legitimacy of revocation in proving a deterrent to others to the employment of illegal workers.
- 2.25 The Home Office has made checklists 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 inadvertently employing an illegal worker.
- 2.26 Since April 2017 these checklists have been embedded in the statutory applications for personal licences and premises licences, the transfer of premises licences and designated premises supervisor variations.
- 2.27 The first 4 'hits' on a Google search for "right to work" are links to employer checklists and information on the GOV.UK website.
- 2.28 The first link (<https://www.gov.uk/check-job-applicant-right-to-work>) details general advice, checking the documents, taking a copy of the documents, what if the job applicant can't show their documents and provides details of an employers' telephone helpline. This page has a direct link to what documents are acceptable proofs of a right to work in the UK and also allows an employer to fill out an online enquiry about a named individual they are considering offering employment to.

Appendix A sets the above out in some detail.

Relevance/irrelevance of a Civil Penalty or Prosecution

- 2.29 An employer found to have 'employed' an illegal worker may, dependent on culpability and the evidence available, be issued with a civil penalty or prosecuted or indeed neither.
- 2.30 Where an illegal worker is detected a civil penalty maybe issued against the employer in accordance with the Home Office Code of Practice on Preventing Illegal Working (May 2014). In the case of a civil penalty the balance of probabilities test applies where as a prosecution requires a higher burden of proof.
- 2.31 However, to issue a civil penalty under section 15 Immigration, Asylum and Nationality Act 2006 the Home Office Code of Practice requires some proof that not only was an illegal worker working at the premises, but they were 'employed'. Usually this is taken as meaning the illegal worker was under a contract of service or apprenticeship, whether express or implied and whether oral or written.
- 2.32 But where an employee has not bothered with the basics of return to work checks, placed an employee on 'the books', paid the minimum wage or paid employer national insurance contributions - it becomes difficult to 'prove' the employment statement where the only evidence maybe the word of an illegal worker who has since been detained or who has 'moved on'.
- 2.33 In such cases where paid employment cannot be demonstrated, a civil penalty may not be issued even where the premises licence holder or his agent has facilitated a disqualified person committing an offence under section 24B Immigration Act 1971 (as amended by Immigration Act 2016) of working illegally.
- 2.34 This does not however prevent the crime prevention objective being engaged with as the premises licence holder has none the less facilitated a criminal offence taking place and the lack of checks suggests that in the past (and is likely in the future) has employed illegal workers. In drawing its conclusion, the subcommittee is entitled to exercise common sense and its own judgment based on the life experience so fits members. The East Lindsey case (see section 8) provides that action (revocation) to prevent what is likely to happen in the future is legitimate.

Appendix A – Right to Work checks

The first 4 'hits' on a Google search for "right to work" are links to employer check lists and information on the GOV.UK website.

The second link is to the Home Office document; "An Employer's Guide to Right to Work Checks" (published 16th May 2014 last updated 16th August 2017).

Another link provides a site (<https://www.gov.uk/employee-immigration-employment-status>) which guides an employer through the process AND allows an employer to make an online submission to the Home Office to check if the proposed employee is prohibited from working as well as providing a telephone helpline.

Specifically, the first link (<https://www.gov.uk/check-job-applicant-right-to-work>) provides as follows:

General Advice

- You must see the applicant's original documents;
- You must check that the documents are valid with the applicant present; and
- You must make and keep copies of the documents and record the date you made the check.

Checking the Documents

In relation to checking the documents it also adds that an employer needs to check that:

- the documents are genuine, original and unchanged and belong to the person who has given them to you;
- The dates for the applicant's right to work in the UK haven't expired;
- Photos are the same across all documents and look like the applicant;
- Dates of birth are the same across all documents;
- The applicant has permission to do the type of work you're offering (including any limit on the number of hours they can work);
- For students you see evidence of their study and vacation times; and
- If 2 documents give different names, the applicant has supporting documents showing why they're different, e.g. a marriage certificate or divorce decree.

Taking a copy of the documents

When you copy the documents:

- Make a copy that can't be changed, e.g. a photocopy

- for passports, copy any page with the expiry date and applicant's details (e.g. nationality, date of birth and photograph) including endorsements, e.g. a work visa
- for biometric residence permits and residence cards (biometric format), copy both sides
- for all other documents you must make a complete copy
- keep copies during the applicant's employment and for 2 years after they stop working for you
- record the date the check was made

If the job applicant can't show their documents

You must ask the Home Office to check your employee or potential employee's immigration employment status if one of the following applies:

- you're reasonably satisfied that they can't show you their documents because of an outstanding appeal, administrative review or application with the Home Office;
- they have an Application Registration Card; or
- they have a Certificate of Application that is less than 6 months old
Application registration cards and certificates of application must state that the work the employer is offering is permitted. Many of these documents don't allow the person to work.

The Home Office will send you a 'Positive Verification Notice' to confirm that the applicant has the right to work. You must keep this document.

Acceptable Documents

A list of acceptable documents can be found via the link to

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441957/employers_guide_to_acceptable_right_to_work_documents_v5.pdf

Appendix B – Statutory Guidance & Caselaw

Statutory Guidance (s182 LA 2003) and the Authority's Licensing Policy

- 2.35 In order to avoid punitive action, respondents to review hearings sometimes refer to both the statutory guidance issued under section 182 Licensing Act 2003 and those parts of the Authority's own policy which replicate paragraph 11.10 of that Guidance, viz:

Where authorised persons and responsible authorities have concerns about problems identified at premises, it's good practice for them to give licence holder's early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns.

- 2.36 Home Office (Immigration Enforcement) submits that in the particular circumstances of cases where Immigration Compliance and Enforcement receive intelligence concerning the employment of illegal workers and act upon it; such warnings are inappropriate.
- 2.37 Not only would advance warning of enforcement activity prevent the detention of persons committing crimes and the securing of evidence; a warning after the event to comply with immigration legislation serves as no deterrent.
- 2.38 In particular; Home Office (Immigration Enforcement) submits that paragraph 11 .10 of the Guidance must be read in conjunction with the more specific paragraphs relating to reviews arising in connection with crime (paras. 11.24 — 11.29).

- 2.39 Paragraph 77.26

Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. (...). The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the

interests of the wider community and not those of the individual licence holder.

2.40 Thus the financial hardship occasioned by the suspension or revocation of the premises licence should not sway the sub-committee but instead it should look at what is appropriate to promote the objective within the wider business and local community given “illegal labour exploits workers, denies work to UK citizens and legal migrants and drives down wages” (Rt. Hon James Brokenshire, Immigration Minister on the introduction of the 2016 Act).

2.41 In particular; the sub-committee are asked to consider (below) the cases of R (Bassetlaw District Council) v Worksop Magistrates’ Court; [2008] WLR (D)

350 and East Lindsey District Council v Abu Hanif (Trading as Zara’s Restaurant and Takeaway), [2076] EWHC1265 (Admin) where in both cases the High Court stated remedy of the harm or potential harm is not the only consideration and that deterrence is an appropriate consideration in dealing with reviews where there has been activity in connection with crime.

2.42 Paragraph 11.27 of the Guidance states:

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.

Home Office (Immigration Enforcement) would draw the sub-committee’s attention to the change in wording of this paragraph following the April 2017 revision of the guidance, where the previous reference to ‘knowingly employing’ was removed.

2.43 Paragraph 11.28 of the Guidance states:

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.

Home Office (Immigration Enforcement) considers this paragraph self-explanatory; where an enterprise employs illegal workers, it is the duty of Home Office (Immigration Enforcement) to bring forward reviews and for the authority to consider revocation in the first instance.

- 2.44 In support of this statement; Home Office (Immigration Enforcement) would draw the subcommittee's attention to the "Guidance for Licensing Authorities to Prevent Illegal Working in Licensed Premises in England and Wales" (Home Office) [April2017] where at section 4.1 it states;

"It is envisaged that licensing authorities, the police, Home Office (Immigration Enforcement) and other law enforcement agencies will use the review procedures effectively to deter illegal working".

- 2.45 Since the main draw for illegal migration is work, and since low-skilled migrants are increasingly vulnerable to exploitation at the hand of criminal enterprises, the government has strengthened enforcement measures and the statutory Guidance to deter illegal workers and those that employ them.
- 2.46 Deterrence is a key element of the UK government's strategy to reduce illegal working and is supported by both the Guidance and Case Law.

Case Law

- 2.47 Deterrence as a legitimate consideration by a licensing sub-committee has been considered before the High Court where remedial measures (such as the imposition of additional conditions) were distinguished from legitimate deterrent (punitive) measures such as revocation.
- 2.48 R (Bassetlaw District Council) v Worksop Magistrates' Court; [2008] WLR (D) 350.

This was a case where a premises had sold alcohol to under age persons and subsequently the licensing authority suspended the licence. This was overturned on appeal to the Magistrates' Court and subsequently appealed to the High Court by the authority. The premises licence holder argued that they had a policy in place for checking the age of customers, but this was not a perfect policy and had not been adhered to and that rather than revoke the licence, instead stringent conditions on proof of age should instead be imposed on the licence.

- 2.49 Issues relevant to the case before today's sub-committee which were considered in the *Bassetlaw* judgement included whether a licensing authority was restricted to remedial action (as opposed to punitive action such as revocation); and the precedence of wider considerations than those relating to an individual holder of a premises licence when certain criminal activities (as specified in the Guidance) took place.

- 2.50 It specifically examined (and set aside in the case of ‘certain activities’) those parts of the Guidance now contained within paragraph 11.20 and 11.23, viz:

In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review. However, it will always be important that any detrimental financial impact that may result from a licensing authority’s decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises.

- 2.51 In her judgement, Mrs Justice Slade stated (at 32.1 & 33.1 of the citation):

“Where criminal activity is applicable, as here, wider considerations come into play and the furtherance of the licensing objective engaged includes the prevention of crime. In those circumstances, deterrence, in my judgment, is an appropriate objective and one contemplated by the guidance issued by the Secretary of State. (...) However, in my judgment deterrence is an appropriate consideration when the paragraphs specifically directed to dealing with reviews where there has been activity in connection with crime are applicable.”

- 2.52 Having confirmed the legitimacy of punitive measures (suspension/revocation) for offences listed in what is now contained within paragraph 11.27 of the Guidance, Mrs Justice Slade concerned herself with another aspect of the appeal—namely the imposition of conditions which were already present but not properly implemented (paragraph 34.1). In this case the appellant was suggesting that proof of age conditions (rather than revocation) could be imposed to ensure that the legal requirement not to sell alcohol to those under 18 years of age was met by him and his staff.

- 2.53 This has some similarity with any argument that may be put forward in the case before the subcommittee today that the imposition of conditions to check immigration status either directly or through an agency (*essentially a requirement since 2006 under the Immigration, Asylum and Immigration Act 2006*) would serve as sufficient remedy for the employment of illegal workers and negate a deterrent (suspension/revocation) being imposed by the subcommittee despite the wording of the Guidance at paragraph 11.28.

- 2.54 Mrs Justice Slade stated: *“The sixth new provision was acceptable identification to establish the age of a purchaser shall be a driving licence with photographs, passport or proof of age scheme card recognised by or acceptable by the licensing authority. I am told these provisions were already in place, but not properly implemented. No doubt those are perfectly sensible and appropriate provisions to be included on a licence. However, it is said that the action taken on appeal being confined in effect to reiterating existing practice with a minimal addition was entirely inappropriate to meet the situation where there have been sales of alcohol to 14-year-old girls”.*
- 2.55 Home Office (Immigration Enforcement) contends that in the case before the subcommittee the facts are similar. In the cited case straight forward, sensible enquiries could have been made as to the age of the children and the imposition of additional conditions as a form of remedy was considered in appropriate by Mrs Justice Slade for ‘those serious cases’ set out in the Guidance.
- 2.56 In the case before the subcommittee, simple steps (set out at Appendix A) were available to prevent the employment of illegal workers -none were taken; the imposition of conditions to remedy this situation is inconsistent with the section 182 Guidance and this case citation. A negligent employer should expect revocation in the first instance.
- 2.57 *East Lindsey District Council v Abu Hanif (Trading as Zara’s Restaurant and Takeaway)*, [2076] EWHC 7265 (Admin)
This is a recent High Court decision (published April 2016) which has similarities with the one before the sub-committee in that it related to the employment of an illegal worker and where a prosecution for such had not been instigated.
Amongst other matters it had been argued for the premises licence holder that the crime prevention objective was not engaged where a prosecution or conviction for the employment of an illegal worker was not in place. Whilst the initial hearing may have suggested several illegal workers being employed, the High Court appeal and decision related to the employment of one individual and is therefore, Home Office (Immigration Enforcement) would argue, indistinguishable from the matter before the subcommittee today.
- 2.58 The case reaffirms the principle that responsible authorities need not wait for the licensing objectives to actually be undermined; that crucially in considering whether the crime prevention objective has been engaged a prospective consideration (i.e. what is likely to happen in the future) of what is warranted is a key factor. It also reaffirmed the case of *Bassetlaw* in concluding that deterrence is a legitimate consideration of a sub-committee. Mr Justice Jay stated: *“The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal, but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder. This requires a much broader approach to the issue than the mere*

identification of criminal convictions. It is in part retrospective, in as much as antecedent facts will usually impact on the statutory question, but importantly the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence. In any event, I agree with Mr Kolvin that criminal convictions are not required.” (Paragraph 18)

Mr Justice Jay added: “Having regard in particular to the twin requirements of prevention and deterrence, there was in my judgment only one answer to this case. The respondent exploited a vulnerable individual from his community by acting in plain, albeit covert, breach of the criminal law. In my view his licence should be revoked.” (Paragraph 23)

Appendix C – Supporting Evidence

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