



Home Office

Premises Licence Review

**Mr Shakur Ali
Jaflong Restaurant
51 Market Square
Bicester
OX26 6AJ**

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Outline of the Circumstances leading to the Review Application

Summary

- 1.1 Intelligence was received stating that illegal workers had been employed at Jaflong, 521 Market Square, Bicester OX26 6AJ. Further to the allegation, it was also claimed that the owner was earning more profit than he was declaring for tax purposes.
- 1.2 On 11 October 2019 at approximately 18:35hrs, an Immigration Enforcement operation was carried out with a colleague from Cherwell District Council Licensing Authority under Section 179 of the Licensing Act 2003.
- 1.3 At the time of the visit, four people were found to be working illegally at the premises; three individuals were arrested for being in the UK with no valid leave.
- 1.4 At the time of the operation the premises were operating under a premises licence issued to Mr Shakur Ali. This has been the case since 2005.
- 1.5 The premises and its management were already known to the immigration authorities because of previous intelligence received stating that ALI was employing illegal workers.
- 1.6 A visit was conducted in November 2011 where four immigration offenders were discovered who had no right to remain in the UK or work here and were arrested.
- 1.7 On 19 September 2013 an intelligence led operation to the premises was conducted following further intelligence that an individual, [REDACTED] was working illegally at the premises. Although [REDACTED] was not encountered at the premises in 2013, he was encountered at the premises in 2019 and subsequently arrested for not having a right to live or work in the UK.
- 1.8 Furthermore, during the most recent visit, one of the illegal workers encountered at the premises admitted to Immigration Officers that ALI was aware that he was in the UK illegally. ALI has shown total disregard for Immigration law and lack of employment judgement on how to conduct the correct right to work checks.
- 1.9 During the visit, Immigration Officers noticed that the premises was in very bad condition; there were 8 bed spaces found upstairs over the 1st and 2nd floors. The Fire Doors had had the handles removed and there were

no obvious working smoke alarms. The Fire Service was called to attend to ensure the premises was safe to remain open.

- 1.10 ICE officers noticed that the cellar walls had been knocked through and it appeared they had also gone through the neighbouring property walls also. There was food stored on the floor in the cellar around the rubble.
- 1.11 In addition to this, the back door in the kitchen area opened out into a small courtyard which was filled with pigeons, mess and feathers with no protection to stop them entering the kitchen area. The carpets also required replacing as officers' boots had stuck to them.
- 1.12 Mr ALI has been issued with a £20,000 Civil Penalty fine which currently remains outstanding to date.
- 1.13 Succeeding parts of this application explore relevant legislation and the statutory guidance and Home Office (Immigration Enforcement) ask the sub-committee to revoke the premises licence as a deterrent to others and the management/owner of this premises in particular.
- 1.14 Copies of all the witness statements or pocket notebook (PNB) entries made by relevant immigration officers are appended; should the sub-committee wish to read these.
- 1.15 Home Office (Immigration Enforcement) ask the subcommittee to consider the flagrant disregard for the legalities of employing responsibly, the failure to heed prior warnings and advice and ask that the subcommittee revoke the premises licence as a deterrent to others and the management/owner of this premises in particular.

Occurrence

- 1.16 At approximately 18:35 hours on 11 October 2019 an immigration enforcement operation took place at Jaflong Restaurant situated at 521 Market Square, Bicester OX26 6AJ.
- 1.17 At the time of the operation the premises were operating under a premises licence issued to Mr Shakur ALI. This had been the case since 2005.
- 1.18 The operation was conducted by [REDACTED] Immigration Compliance & Enforcement (ICE) officers and was accompanied by Licensing Officer [REDACTED]. The team was led by Officer in Charge (OIC) Immigration Officer (IO) [REDACTED] in company with IOs [REDACTED], [REDACTED], [REDACTED] and [REDACTED].
- 1.19 An anonymous allegation had been received stating that Jaflong was employing illegal workers and had done for a number of years. Further to

that, it was also claimed that the owner was earning more profit than he was declaring for tax purposes.

- 1.20 The operation was undertaken under Section 179 of the Licensing Act 2003 as amended by the Immigration Act 2016.
- 1.21 Officers identified four males in total who were of interest to the Home Office, two were detained and three were instructed that they had no permission to work and were escorted off the premises.
- 1.22 The premises and its management were already well known to the immigration authorities because of previous visits where illegal workers were discovered:
 - 02/11/2011 – Four immigration offender discovered.
 - 19/09/2013 – Intelligence received that one named individual was working at the premises, [REDACTED]. No immigration offenders discovered during the visit at the time however [REDACTED] was discovered by ICE officers during the visit on 11/10/2019 and was subsequently arrested.
- 1.23 Anticipating that immigration offenders may attempt to escape detention, the uniformed ICE officers deployed to enter the main entrance of the restaurant building. When OIC [REDACTED] attempted to park at the rear to remain covert, she identified a male who walked out of the kitchen area and saw officers preparing to conduct the visit. This male quickly turned, went back in to the premises and moments later ran back out and down the road.
- 1.24 IO [REDACTED] observed the man run out of the building and IO [REDACTED] pursued on foot as he considered this to be an adverse reaction to the presence of Immigration Enforcement. IO [REDACTED] apprehended the male and effected an arrest under Section 17(1) of the Immigration Act 1971, as amended. IO [REDACTED] believed him to be a person who may be subject to further immigration control, based on his reaction. IO [REDACTED] escorted the male back to the premises to speak with him further.
- 1.25 Home Office checks confirmed the male to be [REDACTED], a [REDACTED] national born on [REDACTED]. [REDACTED] was wearing a pale blue shirt with no tie, black trousers and black shoes.
- 1.26 [REDACTED] had an application under consideration with the Home Office but did not have any permission to work. When IO [REDACTED] questioned [REDACTED] further, [REDACTED] stated that he was not working at the premises and was only there for one night to help out his friend.
- 1.27 [REDACTED] took IO [REDACTED] upstairs to the living accommodation to show IO [REDACTED] a Home Office letter which confirmed that [REDACTED] did have an outstanding application.

- 1.28 IO [REDACTED] confirmed that [REDACTED] had an outstanding application however was not permitted to work while waiting for a decision to be reached on his case. IO [REDACTED] then escorted [REDACTED] off the premises.
- 1.29 IO [REDACTED] proceeded to the kitchen area at the back of the premises to assist his colleagues as a number of individuals had been encountered.
- 1.30 OIC [REDACTED] entered the premises at 18:35 hours, introduced herself to a male and showed her warrant card. OIC [REDACTED] explained the reasons for the visit and introduced Licensing Officer [REDACTED] to the male who identified himself at [REDACTED], a [REDACTED] male born [REDACTED] and the Premise Licence Holders son. [REDACTED] confirmed to OIC [REDACTED] that he was working at the premises while his father recovers from health issues.
- 1.31 OIC [REDACTED] conducted a Health and Safety sweep of the premises and identified bedrooms upstairs and fire hazards. On the first floor, OIC [REDACTED] identified a male sitting in the dark. The male was wearing a shirt and pyjama bottoms and a waiter's uniform was found on a table nearby.
- 1.32 OIC [REDACTED] conducted Home Office checks which confirmed the male to be [REDACTED] who had an outstanding claim with the Home Office. [REDACTED] denied working and could not explain to OIC [REDACTED] the reasons for him sitting in the dark.
- 1.33 OIC [REDACTED] conducted a thorough walk through of the premises and accommodation above with the Licensing Officer [REDACTED] and they established food hygiene issues, fire risk issues and brickwork issues were bricks had been removed from cellar walls.
- 1.34 During the visit, Immigration Officers noticed that the premises was in very bad condition; there were 8 bed spaces found upstairs over the 1st and 2nd floors. The Fire Doors had had the handles removed and there were no obvious working smoke alarms. The Fire Service was called to attend to ensure the premises was safe to remain open.
- 1.35 ICE officers noticed that the cellar walls had been knocked through and it appeared they had also gone through the neighbouring property walls also. There was food stored on the floor in the cellar around the rubble. In addition to this, the back door in the kitchen area opened out into a small courtyard which was filled with pigeons, mess and feathers with no protection to stop them entering the kitchen area. The carpets also required replacing as officers' boots had stuck to them.
- 1.36 Licensing Officer [REDACTED] agreed to contact Public Protection relating to the food health issues. It was decided that, due to building safety issues that included no working fire alarms in the bedrooms, blocked fire doors and issues with the cellar walls, the Fire Service were called to conduct

further enquiries. It was agreed by the Fire Service that they would attend on the evening of 11/10/2019 after ICE officers had left.

- 1.37 The ICE officers subsequently identified that three persons had been encountered working at the premises with no right to remain in the UK or work here, these were:
- ██████████, a national of ██████████ who is an immigration overstayer with no right to work in the UK.
 - ██████████, a national of ██████████ who entered the UK illegally and has no right to remain in the UK or work here.
 - ██████████, a national of ██████████ who is an immigration overstayer with no right to work in the UK.
- 1.38 All three immigration offenders were arrested and detained as a result of the immigration enforcement visit to Jaflong Restaurant. The situation regarding each of the illegal workers is described below.
- ██████████
- 1.39 IO ██████████ took up the rear cover to the restaurant with another Immigration Officer and entered the premises under Section 179 of the Licensing Act 2003.
- 1.40 IO ██████████ identified a male in the kitchen area and with the assistance of a Home Office approved interpreter, confirmed that the individual's name was ██████████, a ██████████ national born ██████████.
- 1.41 Home Office checks confirmed that ██████████ had overstayed his period of leave in the UK after his visit visa expired on 07/02/2013.
- 1.42 IO ██████████ arrested ██████████ under Schedule 2, Section 17(1) of the Immigration Act 1971 (as amended) as a person liable to be detained.
- 1.43 It was confirmed that ██████████ had no right to work in the UK, so IO ██████████ decided to conduct an illegal working interview with ██████████.
- 1.44 IO ██████████ asked ██████████ how long he has been working at Jaflong and ██████████ replied that he had been working at the premises for six months. ██████████ confirmed that he works six days per week and gets Monday's off. IO ██████████ asked ██████████ how many hours he works per day and ██████████ stated that he works 9 hours per day.
- 1.45 IO ██████████ asked ██████████ if he gets paid and how much is he paid. ██████████ stated that he gets paid cash in hand every Sunday and earns £120 per week.

- 1.46 IO [REDACTED] asked [REDACTED] to confirm who the boss is, and [REDACTED] confirmed that SHOKOR (SHAKUR) ALI is the boss and he is the person who pays [REDACTED] his wages and tells him what days/hours to work.
- 1.47 IO [REDACTED] asked [REDACTED] what his job role is and what his duties are. [REDACTED] stated that he was a chef.
- 1.48 When questioned by IO [REDACTED] on how he is paid, [REDACTED] stated that he gets food and free accommodation with the job.
- 1.49 [REDACTED] informed IO [REDACTED] that he showed SHAKUR ALI a copy of his passport when he was offered the job.
- 1.50 [REDACTED] was then removed from the premises and taken into immigration detention as a person liable to be removed from the UK.

[REDACTED]

- 1.51 IO [REDACTED] encountered [REDACTED], a [REDACTED] male in the kitchen area of the premises. [REDACTED] was wearing dirty chef whites and black trousers.
- 1.52 When questioned by IO [REDACTED], [REDACTED] admitted that he had last entered the United Kingdom in 2007, concealed in the rear of a lorry.
- 1.53 Home Office checks confirmed that there was no previous record of [REDACTED] and no indication that he had applied for, nor been granted, any permissions to be residing and working in the UK.
- 1.54 IO [REDACTED] arrested [REDACTED] under Section 17(1) of the Immigration Act 1971 as amended.
- 1.55 IO [REDACTED] asked [REDACTED] questions relating to his employment; [REDACTED] stated that he works as a kitchen porter and gets paid £10 per day alongside accommodation and meals.
- 1.56 [REDACTED] also admitted to IO [REDACTED] that his employer, SHAKUR ALI was fully aware that [REDACTED] was unlawfully present in the UK.
- 1.57 The facts of the case were referred to Chief Immigration Officer (CIO) [REDACTED] who authorised the service of a Removal Notice to [REDACTED]
- 1.58 IO [REDACTED] then escorted [REDACTED] to an Immigration Enforcement vehicle and transported him to a custody suite.

- ██████████
- 1.59 IO ██████████ encountered a male attempting to run out of the kitchen. Home Office checks confirm the person to be ██████████, a ██████████ national born on ██████████ with no right to work in the UK.
- 1.60 IO ██████████ conducted an illegal working interview with ██████████.
- 1.61 IO ██████████ asked ██████████ how long he had been working at Jaflong and ██████████ replied that he had been working at the premises for 12 weeks.
- 1.62 ██████████ stated to IO ██████████ that he works at Jaflong five days per week, working 6 hours per shift and works the same hours every week.
- 1.63 IO ██████████ asked ██████████ what his job role was, ██████████ stated that he is a Chef and cooks all of the food. ██████████ also confirmed with IO ██████████ that SHAKUR ALI gave him the job and tells him what days/hours to work.
- 1.64 IO ██████████ then asked ██████████ to confirm how he is paid. ██████████ confirmed that he is paid £25 per shift in cash and SHAKUR ALI pays ██████████ his wages.
- 1.65 When IO ██████████ asked ██████████ if he pays income tax or if ██████████ has a National Insurance number, ██████████ replied that he did not and that he did not show any documents before being offered the job as SHAKUR ALI knows that ██████████ is illegal

Reasons for Review

- 2.1 Whether by negligence or wilful blindness illegal workers were engaged in activity on the premises on three separate occasions, yet it is a simple process for an employer to ascertain what documents they should check before a person can 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 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; therefore, Home Office (Immigration Enforcement) has proceeded straight to review.

Outcome Sought

- 3.1 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.
- 3.2 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.
- 3.3 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.
- 3.4 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.
- 3.5 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
- 3.6 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".

- 3.7 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.
- 3.8 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).
- 3.9 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.
- 3.10 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.
- 3.11 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.
- 3.12 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.

- 3.13 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

- 3.14 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 revocation/suspension of their premises licence.
- 3.15 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.
- 3.16 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"*.
- 3.17 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.
- 3.18 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.

- 3.19 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.
- 3.20 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

- 3.21 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.
- 3.22 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.
- 3.23 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.
- 3.24 The first 4 'hits' on a Google search for "right to work" are links to employer checklists and information on the GOV.UK website.
- 3.25 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.

3.26 Appendix A sets the above out in some detail.

Relevance/Irrelevance of a Civil Penalty or Prosecution

- 3.27 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.
- 3.28 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.
- 3.29 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.
- 3.30 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'.
- 3.31 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.
- 3.32 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

- 3.33 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.

- 3.34 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.
- 3.35 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.
- 3.36 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).
- 3.37 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.

3.38 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).

3.39 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.

3.40 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.

3.41 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.

- 3.42 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) [April 2017] 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".

- 3.43 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.
- 3.44 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

- 3.45 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.
- 3.46 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.

- 3.47 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.

- 3.48 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.

- 3.49 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."

- 3.50 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.

- 3.51 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.

- 3.52 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”.

- 3.53 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.
- 3.54 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.
- 3.55 *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.
- 3.56 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