

# **LICENSING ACT 2003**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **PART 1 – Licensable activities**

##### **General**

24. This Part describes those activities that are covered by the Act and as a consequence prescribes those matters which are regulated by the provisions in the Act, thereby determining its scope of application. The Part also sets out circumstances in which a licensable activity and qualifying club activity may be carried on.

##### ***Section 1 – Licensable activities and qualifying club activities***

25. This section in subsection (1) lists four activities which are to be regulated by the provisions of the Act and which constitute licensable activities. These are: -
- the sale by retail of alcohol (see commentary on sections 191 and 192);
  - the supply of alcohol by clubs;
  - the provision of regulated entertainment (see commentary on Schedule 1); and
  - the provision of late night refreshment (see commentary on Schedule 2).
26. In subsection (2), this section lists those licensable activities which, for the purposes of the Act, are “qualifying club activities” and which as a consequence may be carried on by qualifying clubs under a club premises certificate (see commentary on Part 4 of the Act). Qualifying club activities are: -
- the supply of alcohol by clubs to members for consumption on or off the premises;
  - the sale by retail of alcohol by clubs to members’ guests for consumption on the premises; and
  - the provision of regulated entertainment by the club for its members and guests.
27. Subsection (1)(b) specifies as a licensable activity the supply of alcohol by or on behalf of a club to or to the order of its members. This is necessary due to the fact that alcohol in possession of a club will belong to its members and in terms of its further distribution to the members there will be no sale by retail. However, a sale by retail will take place in relation to purchases by guests of members.
28. Some bodies which call themselves “clubs” are in fact not within the ownership or control of their members. In such cases, any supplies of alcohol to members are sales by retail. Subsection (3) ensures that the references in the Act to the supply of alcohol by clubs to members do not include supplies by such clubs.
29. Finally, in subsection (7), the section refers forward to sections 173, 174 and 175 in Part 9 of the Act which provide that certain activities which would otherwise fall within

subsection (1) are not licensable activities for the purposes of the Act (see commentary on Part 9).

### ***Section 2 - Authorisation for licensable activities and qualifying club activities***

30. Subsections (1) and (2) provide that a licensable activity may be carried on under and in accordance with a premises licence (see commentary on Part 3), a temporary event notice (see commentary on Part 5), or, if it is also a qualifying club activity, under and in accordance with a club premises certificate (see commentary on Part 4). By virtue of section 136 the carrying on of a licensable activity otherwise than in accordance with a premises licence, club premises certificate or temporary event notice is an offence.
31. Subsection (3) provides that more than one authorisation (that is, a premises licence, a club premises certificate or a temporary event notice) can cover the same premises. This enables, for example, a qualifying club that wishes to provide entertainment to members of the public on certain days to hold both a club premises certificate to cover its normal operation and a premises licence, to authorise the provision of entertainment, in respect of the same premises. Where there is more than one authorisation, they may be held by the same person or different people.

## **PART 2: Licensing authorities**

### **General**

32. **Part 2** lists the bodies which are to be licensing authorities under the Act, describes the licensing objectives which the licensing authority must promote, and places an obligation on licensing authorities to publish a statement of licensing policy.
33. It also sets out the requirement for a licensing authority to establish a licensing committee and covers the delegation of licensing functions to licensing committees, sub-committees or officers of the licensing authority. The sections also cover the obligation to maintain a licensing register.

### ***Section 3 - Licensing authorities***

34. This section lists the bodies which for the purposes of the Act will act as licensing authorities. Subsection (2) describes the geographical area in which the authority will act.

### ***Section 4 - General duties of licensing authorities***

35. This section sets out the licensing objectives that must be promoted by the licensing authority in carrying out its duties. These are: -
  - the prevention of crime and disorder;
  - public safety;
  - the prevention of public nuisance;
  - the protection of children from harm.
36. The four licensing objectives aim to ensure that the carrying on of licensable activities on or from premises is done in the public interest. The third licensing objective, the prevention of public nuisance, will not extend to every activity which annoys another person but will cover behaviour which, when balanced against the public interest, is found to be unacceptable. The fourth licensing objective relates to harm to children beyond matters relating to physical safety.
37. Subsection (3) provides that when discharging its functions, the licensing authority must have regard to its policy framework document under section 5 and to any guidance issued by the Secretary of State (section 182).

### ***Section 5 - Statement of licensing policy***

38. This section requires each licensing authority to determine and publish a statement of its licensing policy every three years. The first three-year period will begin with a day appointed by the Secretary of State. Subsection (3) lists those whom the licensing authority must consult in preparing its licensing policy; these include the police, the local fire authority, people who represent holders of premises and personal licences and club premises certificates, and people representative of local businesses and residents. Schedule 8 makes transitional provision requiring holders of those representing licensees under the existing licensing regimes to be consulted until the new regime is in force. Subsection (4) imposes a duty on an authority to keep its licensing policy under review. Any revisions to it, following consultation with those listed in subsection (3), must be published. Subsection (7) provides that the Secretary of State may make regulations relating to the formation of licensing policy and the publication of licensing statements.

### ***Section 6 - Licensing Committee***

39. This section requires each licensing authority (with the exception of those which cover only the Inner and Middle Temples which consist, in each case, of only one person) to establish a licensing committee of between ten and fifteen members of the authority.

### ***Section 7 - Exercise and delegation of functions***

40. Subsections (1) and (2) of this section provide that the licensing committee will discharge all of the authority's licensing functions, except for the function of the determination and publication of its statement of licensing policy.
41. Subsection (3) provides that the authority may decide that its licensing committee must also discharge additional functions of the authority that are related to its licensing functions. If a licensing authority chooses to discharge such related functions itself rather than to arrange for the licensing committee to discharge them, it must consider any relevant report prepared by the licensing committee before acting in any such matter (unless it is urgent). This ensures that the licensing committee will have an input into any matter relating to the authority's licensing functions.
42. Subsections (5) to (8) provide that in cases where a matter concerns other functions in addition to licensing functions, a licensing authority may choose to refer the matter either to its licensing committee (having first consulted it) or to another of its committees. If the latter course is followed, then in considering the matter, that committee must consider any report unless the matter is urgent) prepared by the licensing committee. If the former course is followed the licensing committee must, in considering the matter, consider any report about the matter prepared by any of the of the authority's other committees (again, unless the matter is urgent).
43. Subsection (9) makes provision that if a licensing committee is unable to discharge its functions because some of its members are prevented from considering or voting on a matter – for example, if they are disqualified under the licensing authority's standing orders because they have a financial interest in the matter – then the matter is instead referred back to the licensing authority for it to discharge its functions in relation to the matter.
44. Subsection (10) disapplies the provisions in the section with respect to the Inner Temple and the Middle Temple with the result that in those cases the licensing authority will discharge all its licensing functions.

### ***Section 8 - Requirement to keep a register***

45. Subsection (1) provides that each licensing authority must maintain a register which records details of the authorisations it issues, the temporary event notices it receives,

other notices and applications to it as set out in Schedule 3, and any other information which the Secretary of State prescribes. Under subsection (2) the Secretary of State is given the power to make regulations as to how that register must be maintained. Subsections (3) to (5) provide that the information contained in the register must be made available for inspection by the public during office hours, free of charge, and that a copy of that information must be supplied on request (for a fee). Subsections (6) and (7) make provision for the Secretary of State to arrange, through administrative action, for the establishment of one or more central registers, in which case the licensing authorities may be required to pay for the cost of such arrangements.

### ***Section 9 - Proceedings of licensing committee***

46. By virtue of the provision of this section, a licensing committee may form one or more sub-committees, each comprising three members of the committee. The Secretary of State is given the power to make regulations relating to the committees and sub-committees' proceedings, public access to their meetings, publicity, agendas and records. Otherwise, licensing committees may regulate their own procedure and that of their sub-committees.

### ***Section 10 - Sub-delegation of functions by licensing committee etc.***

47. Subsection (1) provides that a licensing committee may sub-delegate the exercise of its functions to a sub-committee of the licensing committee, or to an officer of the licensing authority. Subsection (2) provides that in turn, the sub-committee can delegate functions to such an officer. Subsection (5) provides that such a delegation will, however, be subject to any direction made by the licensing committee. Subsection (3) provides that more than one such sub-committee or officer can discharge the same functions at the same time: thus, for example, a busy licensing committee which is faced with a high volume of licence applications could arrange for a number of licensing sub-committees to deal with them in parallel. However, subsection (4) sets out certain functions which may not be delegated to an officer. These are functions in respect of which representations or objections have been made and with which it is appropriate for the licensing committee or one of its licensing sub-committees to deal.

## **PART 3: Premises licences**

### **General**

48. This Part of the Act provides for a single licensing system for all premises used for licensable activities (see note on Part 1 for description of licensable activities). The 'relevant licensing authority' (see section 12) is to consider applications for premises licences.
49. Under the system established by the Act, an applicant for a premises licence will submit an operating schedule setting out certain details about the activities to be carried out on or from the premises. Where no relevant representations are made by responsible authorities (the police, fire authority, health and safety agency, etc) or interested parties (local residents and businesses), the licensing authority must grant the licence application, subject to certain mandatory conditions (see sections 19, 20 and 21).
50. If relevant representations are received, the licensing authority must, unless specified persons agree, convene a hearing and consider the representations. This consideration may result in the rejection of the licence application in whole or in part, or the attachment of conditions to the licence that relate to the promotion of one or more of the licensing objectives.

### ***Section 11 - Premises licence***

51. For the purposes of the Act, a premises licence is defined in the section as a licence which authorises the use of specified premises for the carrying on of one or more licensable activities (see sections 1 and 2).

### ***Section 12 - The relevant licensing authority***

52. This section provides that for the purposes of premises licences, the relevant licensing authority for any premises is the authority in whose area the premises are situated (or mainly situated). If premises straddle two or more areas equally, applicants can nominate one of the licensing authorities in question to act as the relevant licensing authority. The effect of this section is to identify the authority which will carry out licensing functions in relation to premises licences.

### ***Section 13 - Authorised persons, interested parties and responsible authorities***

53. This section defines the terms ‘authorised persons’, ‘interested parties’ and ‘responsible authorities’. The significance of designation as an ‘authorised person’ is that it confers a role in the inspection of premises in connection with their use for licensable activities (see in particular sections 57 and 59). An interested party or responsible authority may make representations to a licensing authority in relation to the application for the grant, variation or review of a premises licence.

### ***Section 14 – Meaning of ‘supply of alcohol’***

54. This section defines for the purposes of Part 3 the ‘supply of alcohol’ as sale by retail or the supply by or on behalf of a club to its members (see paragraph 27 above).

### ***Section 15 – Meaning of ‘designated premises supervisor’***

55. This section defines the term ‘designated premises supervisor’ as the individual who is specified in a premises licence as fulfilling the role of ‘premises supervisor’ for those premises. A ‘designated premises supervisor’ is required in every case where the premises licence authorises the supply of alcohol, and no supply of alcohol may be made on the premises unless there is a designated premises supervisor in possession of a personal licence (see section 19).

### ***Section 16 – Applicant for premises licence***

56. This section lists the categories of persons who may apply for a premises licence in respect of any premises. The principal category is anyone who carries on or proposes to carry on a business involving licensable activities on the premises. This will cover any individual (aged at least 18) or business which wishes to carry on, on a commercial basis, the sale of alcohol, the supply of alcohol by a club, or the provision of regulated entertainment (see Schedule 1) or of late night refreshment (see Schedule 2).
57. The section also provides that the following may apply for a premises licence: a person exercising a statutory function (for example, a local authority); a person exercising any function by virtue of the Royal prerogative (for example, a body exercising functions by virtue of a royal charter); recognised clubs (see note on Part 4); charities; educational institutions; health bodies in the public and private sector; the police; and any other category of person prescribed in regulations made by the Secretary of State.

### ***Section 17 - Application for a premises licence***

58. Subsections (1) to (3) provide that applications for a premises licence should be made, in the form prescribed in regulations made by the Secretary of State, to the relevant licensing authority, and must be accompanied by an operating schedule, a plan of the premises and (if the application proposes that the licence will authorise the supply of

alcohol) a form containing the consent of the individual whom it is proposed will be specified in the licence as the designated premises supervisor.

59. Subsection (4) provides that the operating schedule must set out various details relating to the operation of the premises when carrying on licensable activities, including the licensable activities to be carried out, the proposed hours of opening etc, the duration of the licence (if it is to have a fixed term), details about the individual (if any) who is to act as the designated premises supervisor, details of whether alcohol is to be supplied (if at all) for on-sales, off-sales or both, and a statement of how the applicant intends to promote the licensing objectives (for instance, the arrangements to be put in place to prevent crime and disorder, such as door security). The significance of the operating schedule is that if the application for the premises licence is approved, it will be incorporated into the licence itself and will set out the permitted activities and the limitations on them. As a consequence, it is the applicant who will decide, subject to the determination of applications by the authority, the nature and the extent of the activities and the conditions relating to the carrying on of the activities.
60. Subsection (5) provides that the Secretary of State must make regulations setting out how applications are to be advertised, and specifying when interested parties and responsible authorities can make representations to the authority.

### ***Section 18 – Determination of application for premises licence***

61. Subsections (1) and (2) provide that unless relevant representations are made in respect of an application for a premises licence, a licensing authority will be required to grant a licence in accordance with the application if it is duly made. That licence will be subject to conditions consistent with those listed by the applicant in the operating schedule, and subject to the mandatory conditions set out in sections 19, 20 and 21.
62. Subsection (3), together with subsections (6) to (8), provides that where relevant representations are made, licensing authorities are required to hold a hearing. In order for representations to be 'relevant' they must have been made by an interested party or a responsible authority (see the definitions in section 13, paragraph 53 above) and they must relate to the likely effect of the grant of the licence on the promotion of the licensing objectives. Representation relating to the identity of the premises supervisor may only be made by the police (see subsections (6)(c) and (9)) and must meet the requirements of subsection (9)(b). If the representations are made by an interested party there is a further requirement that the licensing authority does not consider them to be frivolous or vexatious. If it does the authority is to explain its decision to the person who made the representations.
63. The need for a hearing can be dispensed with by agreement of the authority, the applicant for the licence and all of the parties who have made relevant representations.
64. Subsection (4) provides that when a hearing is held (or dispensed with as indicated above), the licensing authority must, if it considers it necessary for the promotion of the licensing objectives, attach conditions to any licence granted, rule out any of the licensable activities applied for, refuse to specify a premises supervisor, or reject the application. For example, a licensing authority might decide to remove the playing of amplified recorded music after 11pm from the scope of the licence applied for by a tenant of a pub in the middle of a quiet residential area, or it might prohibit the admittance of under-18s to premises where adult entertainment is provided. If the authority takes the view that none of the foregoing steps is required to promote the licensing objectives it must grant the licence in the terms sought by the applicant.
65. Subsection (10) provides that a licensing authority may, within the same licence, impose different conditions on different parts of the premises, or impose different conditions in relation to different licensable activities.



### ***Section 19 - Mandatory conditions where licence authorises supply of alcohol***

66. By virtue of this section some conditions are mandatory in respect of premises licences. The licensing authority will be required to attach to any premises licence authorising the supply of alcohol the conditions that at any time when such supplies under the premises licence are made
- there must be a 'designated premises supervisor' who is the holder of a valid personal licence, and
  - every supply of alcohol under the premises licence must be made by a personal licence holder (although not necessarily by the designated premises supervisor) or an individual authorised by a personal licence holder.

### ***Section 20 – Mandatory condition: exhibition of films***

67. Where a premises licence authorises the exhibition of a film this section makes it mandatory for a condition to be included in the premises licence requiring the admission of children to films to be restricted in accordance with recommendations given either by a body designated under section 4 of the Video Recordings Act 1984 or by the licensing authority itself. When the Act was passed the only body designated under section 4 of the Video Recordings Act 1984 was the British Board of Film Classification.

### ***Section 21 – Mandatory condition: door supervision***

68. This section applies where the provision of door supervision is a requirement of the premises licence. It requires the licence to provide that anyone carrying out such a security function must be licensed by the Security Industry Authority established under the Private Security Industry Act 2001. Subsection (2) specifies some exceptions to this requirement (e.g. theatres). The provisions of the Private Security Industry Act 2001 are amended by paragraph 118 of Schedule 6 to the Act.

### ***Section 22 – Prohibited conditions: plays***

69. Under this section, in the case of any premises licence authorising the performance of a play (see Schedule 1), licensing authorities will not be able to attach conditions relating to the nature of the play performed or the manner of its performance, unless they are justified as a matter of public safety. This section reproduces for England and Wales the effect of section 1(2) of the Theatres Act 1968.

### ***Section 23 – Grant or rejection of application***

70. A licensing authority which grants or refuses a premises licence is required through this section to notify its decision to the applicant, to any person who made relevant representations and to the chief officer of police for the relevant area. If the application is granted, the licensing authority must also notify those parties of any steps it took in response to relevant representations and its reasons for taking or not taking the steps available. It must issue the licence and a summary of it to the applicant. If the application is rejected, the licensing authority must notify those parties of the reasons for its decision.

### ***Section 24 – Form of licence and summary***

71. This section makes provision for a premises licence and the summary of it to be in a form prescribed in regulations made by the Secretary of State. Subsection (2) lists the basic requirements which those regulations must include as to the information to be included in a premises licence. Under section 57, the summary must be displayed prominently at the relevant premises.

***Section 25 - Theft, loss, etc. of premises licence or summary***

72. Subsection (1) provides that a premises licence holder may apply to the licensing authority for a copy of the premises licence if it has been lost, stolen, damaged or destroyed. Subsection (3) provides that if the licensing authority is satisfied of the veracity of such an application, it must then issue a certified copy of the licence. Where a licence has been lost or stolen, there is an additional requirement that the licence holder must have reported this to the police. A fee may be prescribed for the issue of replacement documents. Subsection (5) provides that the provisions in the Act will apply to the issued copy of the premises licence as they applied to the original licence. This section applies in relation to the summary of the licence as it applies to the licence.

***Section 26 – Period of validity of premises licence***

73. This section makes provision that, unless it has been granted only for a limited period, the premises licence will last until it is surrendered or revoked. Subsection (2) provides that if a premises licence is suspended, it will not have effect during periods of suspension.

***Section 27 – Death, incapacity, insolvency etc of licence holder***

74. This section provides that a premises licence will lapse if the holder dies, becomes mentally incapable or insolvent, in the case of a company is dissolved, or in the case of a club ceases to be a recognised club. Insolvency, is relevant to individuals or companies and is widely defined to include, among other things, voluntary arrangements, bankruptcy, administration and administrative receivership. Subsection (2) provides that the lapse of a licence is subject to the possibility of it being reinstated under section 47 or 50.

***Section 28 – Surrender of premises licence***

75. This section provides that a licence holder may voluntarily surrender a premises licence by returning it to the licensing authority accompanied by a notice of surrender. If it is impractical to return the licence (e.g. where it has been lost), a statement to that effect must be sent with the notice of surrender. A premises licence ceases to have effect when the authority receives the notice of surrender. Subsection (4) makes reference to the fact that, in certain circumstances, surrendered licences can be reinstated (see section 50).

***Section 29 – Application for a provisional statement where premises being built, etc.***

76. Subsections (1) and (2) provide that in relation to premises which are being or are about to be constructed, extended or altered for use for licensable activities a person interested in the premises (in the case of an individual there is the requirement that the person is 18 or over) may apply to the licensing authority for a 'provisional statement'. A provisional statement is a statement issued by the authority in accordance with section 31 (see paragraph 78 below). Subsection (4) provides that any such application may be required to be in a form prescribed by the Secretary of State and accompanied by a fee. Subsection (6) provides that the application must also be accompanied by a schedule of works, which sets out details of the premises concerned, of the licensable activities intended to be carried on there and of the planned construction or alteration works (with plans). The effect of the section is to establish a mechanism whereby those engaged in or about to engage in construction or development work at premises to be used for licensable activities, or already used for those activities, can obtain a certain degree of assurance about their potential trading conditions. By obtaining a provisional statement they can receive, at an early stage, a statement describing the likely effect of the intended licensable activities on the licensing objectives and an indication of the prospects of any future application for a premises licence.



***Section 30 – Advertisement of application for provisional statement***

77. This section provides that regulations must require applications for provisional statements to be advertised in the prescribed manner to give responsible authorities and interested parties, including local residents, the opportunity to make representations about the application. Those regulations may also require any such advertisement to contain a statement, in wording set by the regulations, to make it clear that people will be precluded from subsequently objecting to the grant of a premises licence for the premises concerned if they could have made the same objection when the provisional statement was sought.

***Section 31 – Determination of application for provisional statement***

78. Subsections (1) and (2) provide that unless relevant representations are made in respect of an application for a provisional statement, a licensing authority will be required to issue a provisional statement stating that no relevant representations have been made.
79. Subsection (3), together with subsections (6) and (7), provide that where relevant representations are made licensing authorities are required to hold a hearing. In order for representations to be ‘relevant’ they must have been made by an interested party or a responsible authority (see the definitions in section 13) and they must relate to the likely effect on the licensing objectives if a premises licence were to be granted in the form sought if the premises were constructed or altered in the way proposed in the schedule of works (see section 29). If the representations are made by an interested party there is a further requirement that the licensing authority does not consider them to be frivolous or vexatious. If it does, the authority is to explain its decision to the person who made the representations. The need for a hearing can be dispensed with by agreement of the authority, the applicant for the provisional statement and all of the parties who have made relevant representations.
80. When a hearing is held (or dispensed with as indicated above), the licensing authority must decide whether, if the premises were constructed or altered in the way proposed in the schedule of works and if a premises licence was sought for those premises, it would consider it necessary for the promotion of the licensing objectives to attach conditions to the licence, to rule out any of the licensable activities applied for, to refuse to accept the person specified as premises supervisor, or to reject the application. The licensing authority must then notify its decision (together with its reasons for considering that it would be necessary to impose any condition or restriction in respect of a premises licence or reject an application for a premises licence) to the applicant, the police and any person who has made relevant representations about the application.

***Section 32 – Restriction on making representations following provisional statement***

81. By virtue of this section, in cases where a premises licence is later sought for premises in relation to which a provisional statement has been issued, interested parties and responsible authorities will not be able to make representations on such applications in respect of matters upon which representations could have been made by them when the provisional statement was applied for. Subsection (3) provides that this restriction will not apply if a person who wishes to make those representations has a reasonable excuse for not having made those representations at the time of the application for the provisional statement, or if there has been a material change in the circumstances relating to those premises or the vicinity of those premises since that time. For example, a person may have been confined to hospital during the period in which representations could have been made in circumstances where arrangements could not have been put in place for representations to be made.

***Section 33 – Notification of change of name or address.***

82. This section places a duty on the holder of a premises licence to notify the licensing authority of any change of name or address of the premises licence holder or of the

designated premises supervisor (unless the designated premises supervisor has already done so in accordance with subsection (4)). Such notification of a change of the licence holder's name or address or that of the designated premises supervisor must be accompanied by the licence (unless that is impracticable, when a statement must be provided) and by any fee that may have been prescribed. Notification of a change of the designated premises supervisor's name or address may be made by the designated premises supervisor under subsection (4) (in which case he must notify the licence holder). Failure to provide the required notifications is an offence.

#### ***Section 34 - Application to vary premises licence***

#### ***Section 35 - Determination of application under section 34 and***

#### ***Section 36 - Supplementary provision about determinations under section 35***

83. Under these sections a premises licence holder can apply, in the prescribed form and manner, to vary that licence in any way, other than to change the designated premises supervisor (for which there is a separate procedure (see section 37)), to extend the time for which the licence has effect (if it is time limited) or to vary substantially the premises to which it relates. In general the ability to apply for a variation of a premises licence under these sections will concern variation of the conditions attaching to the licence or of the authorised licensable activities. Any such application may be subject to a fee and is subject to regulations under section 17 relating to advertising requirements. The application must also be accompanied by the premises licence (unless that is impracticable when a statement explaining why must be provided).
84. By virtue of section 35, the authority must make the variation as applied for, subject to the mandatory conditions, unless relevant representations are made, in which case a hearing must be held. In order for representations to be 'relevant' they must have been made by an interested party or a responsible authority (see the definitions in section 13) and they must relate to the likely effect on the promotion of the licensing objectives if the application were to be granted. If the representations are made by an interested party there is a further requirement that the licensing authority does not consider them to be frivolous or vexatious. If it thinks they are, it must explain its decision to the person who made the representations. The need for a hearing can be dispensed with by agreement of the authority, the applicant for the variation and all of the parties who have made relevant representations.
85. In any case where relevant representations have been made, subsection (3) of section 35 provides that the licensing authority must, if it considers it necessary for the promotion of the licensing objectives (see section 4), modify the conditions of the licence or reject the application for variation (in whole or in part). If the licensing authority does not consider it necessary to modify the licence or reject the application it will grant the variation in the terms sought. The authority must notify its decision to the applicant, the police and any person who has made relevant representations, and must give reasons for its decision. A variation of a premises licence may impose different conditions on different parts of the premises, or impose different conditions in relation to different licensable activities. The provisions in these sections follow closely the procedure to apply in respect of an original application for a premises licence (see paragraph 58 above).

#### ***Section 37 – Application to vary licence to specify individual as premises supervisor***

86. Subsections (1) to (3) provide that a premises licence holder can apply to name a person in the licence as the premises supervisor or substitute a different person for the person currently named. Any such application may be required to be in a form prescribed by the Secretary of State and to be accompanied by a fee. The application must also be accompanied by a form of consent given by the proposed new premises supervisor, and by the premises licence or the relevant part of the licence or a statement as to why the

licence or part cannot be submitted. Subsection (4) provides that the applicant must notify the police and the existing designated premises supervisor, if there is one, of the application. Subsections (5) and (6) provide that the chief officer of police can object to the variation if he believes there are exceptional circumstances whereby the grant of the application to specify a new premises supervisor would undermine the crime prevention objective, and if so he must provide reasons for his decision within 14 days.

### ***Section 38 – Circumstances in which section 37 application given interim effect***

87. An application to vary a premises licence so as to name a different premises supervisor may be given immediate effect (that is, from the time that the application is received by the licensing authority) if the premises licence holder requests it at the time he makes an application under section 37. This section enables the holder of a premises licence to continue the supply of alcohol if, for example, the existing premises supervisor is suddenly indisposed or unable to work. If the application is rejected, the licence reverts to the form it took before the application was made.

### ***Section 39 – Determination of section 37 application***

88. By virtue of this section the relevant licensing authority must grant the application to vary the designated premises supervisor except where the chief officer of police for the area gives notice that to do so would undermine the crime prevention objective, in which case a hearing must be held. The need for a hearing can be dispensed with by agreement of the authority, the applicant for the variation and the police.
89. In any case where the police have given notice of objection under section 37 (5), the licensing authority must, if it considers it necessary for the promotion of the licensing objectives (see section 4), reject the application for this variation. In any other case the variation must be granted.
90. The authority must notify its decision to the applicant, the police and the proposed new designated premises supervisor, and must give reasons for its decision.

### ***Section 40 – Duty of applicant following determination under section 39***

91. If an application to vary the designated premises supervisor is granted, by virtue of this section the premises licence holder must notify the person (if any) who is being replaced as such supervisor. Failure to do so will be an offence.

### ***Section 41 – Request to be removed as designated premises supervisor***

92. A person who wishes to cease acting as designated premises supervisor may give notice under this section. If this person is also the premises licence holder, his notice must be accompanied by the premises licence (unless that is impracticable when he must give a statement of reason as to why this is the case). If he is not the premises licence holder, he must provide the licence holder with a copy of the notice and notify the licence holder that he must send the premises licence to the relevant authority. Failure by the licence holder to submit the licence will be an offence. An effect of this section is that whenever a person stops acting as a designated premises supervisor, the licensing authority will be informed of it and can make the appropriate change in the licensing register. By virtue of subsections (7) and (8) the designated premises supervisor will cease to be such either at the time the licensing authority receives an application or the time specified in the notice if that is later.

### ***Section 42 – Application for transfer of premises licence***

93. Subsections (1) and (2) set out those people or bodies who may apply for the transfer of a premises licence. These are the same as the people and bodies who may apply to be granted a premises licence under section 16. Any such application may be required to be in a form prescribed by the Secretary of State and to be accompanied by a

fee. The application must also be accompanied by the premises licence (unless that is impracticable and then the applicant must state the reasons why this is the case). Subsection (5) provides that the applicant must notify the application to the chief officer of police for the area. The police can object to the transfer if they believe there are exceptional circumstances whereby the grant of the application would undermine the crime prevention objective, and if so they must notify the licensing authority and provide reasons for the objection within 14 days.

### ***Section 43 – Circumstances in which transfer application given interim effect***

94. By virtue of this section a person applying for the transfer of a premises licence may request that it be given immediate effect (that is, that it takes effect from the time that the application is received by the licensing authority). Such an application generally requires the consent of the holder of the premises licence. But no consent is required if the applicant can show that he has taken all reasonable steps to obtain that consent and that he is in a position to use the premises straightaway for the licensable activities authorised by the licence. An authority must provide reasons for any decision to refuse to exempt an applicant from the requirement for consent. The effect of this section is to allow licensable activities to be carried on, at the premises, without interruption, pending the determination of an application for a transfer. The section allows for the possibility of a transfer being given interim effect even where the transferor has not given consent because in some circumstances he may be indisposed or unable to give consent, or a conflict may exist between the existing licence holder and others which does not concern the carrying on of the licensable activities for the purposes of the Act. If the application is rejected, the applicant ceases to be treated as the holder of the licence under this section and the licence reverts to the person who held it before the application was made.

### ***Section 44 – Determination of transfer application***

95. Where a person applies for a premises licence to be transferred to him, this section provides that the licensing authority may not consider the application unless
- the transfer application has been given immediate effect under section 43,
  - the existing licence holder has agreed to the transfer, or
  - the applicant has been exempted from the need to obtain that consent. An applicant will be so exempted if he can show that he has taken all reasonable steps to obtain that consent and that he is in a position to use the premises straightaway for the licensable activities authorised by the licence. An authority must provide reasons for any decision to refuse to exempt an applicant.
96. Subsection (5) provides that if the police have notified the licensing authority of objections under section 42, the authority must hold a hearing to consider the application for transfer, and, if it considers it necessary for the promotion of the crime prevention objective (see section 4), must reject the application. The need for a hearing can be dispensed with by agreement of the authority, the applicant for the transfer and the police. The section provides, in subsection (2), that in all other cases the authority must grant the application for transfer.

### ***Section 45 – Notification of determination under section 44***

97. By virtue of this section the licensing authority must notify its decision to the applicant and to the police, and in any case where the police gave notice under section 42 the authority must give reasons for its decision to grant or reject the application. The authority must also notify its decision to the person who was the licence holder before the application for transfer was made or, where applicable, before it was given interim effect.

***Section 46 – Duty to notify designated premises supervisor of transfer***

98. An applicant for the transfer of a premises licence pursuant to sections 42 and 43 must under this section notify the designated premises supervisor (if any) specified in that licence of his application and, if the application is successful, of the transfer of the premises licence to him. Failure to do so is an offence.

***Section 47 – Interim authority notice following death etc of licence holder***

99. In the initial seven days after the lapse of a premises licence due to the death, mental incapacity or insolvency of a premises licence holder, those with a prescribed interest in the relevant premises or connected to the licence holder (by virtue of being the licence holder's personal representative, having an enduring power of attorney in respect of the individual or acting as insolvency practitioner), under this section can give an interim authority notice to the relevant licensing authority. But no notice can be given if application for a transfer of the premises licence under section 50 has already been made (see paragraph 102 below). Any such notice may be required to be in a form prescribed by the Secretary of State and to be accompanied by a fee. By virtue of subsection (6) the effect of such a notice will be to reinstate the lapsed premises licence, and for the person who gave that notice to become the licence holder, from the time the authority receives the notice for two months, or until terminated by the person who gave notice, unless a successful transfer application is made to the relevant authority within that time. The reinstated licence will also lapse if the police are not notified of the giving of the notice within the initial seven day period (see subsection (7)). A person who gives an interim authority notice becomes the holder of the licence for the interim authority period. Subsection (8) makes it clear that, notwithstanding this, he may apply for the licence to be transferred to him permanently.

***Section 48 – Cancellation of interim authority notice following police objections***

100. Subsections (1) and (2) provide that the police can object within 48 hours of being notified of an interim authority notice, but they can do so only where they believe that exceptional circumstances mean that a failure to cancel the notice would undermine the crime prevention objective. Subsections (3) to (6) provide that in such cases, the authority must hold a hearing to decide whether or not to cancel the notice. The need for a hearing can be dispensed with by agreement of the authority, the police and the person who has given the interim authority notice. If the authority considers it necessary for the promotion of the crime prevention objective (see section 4), it must cancel the interim authority notice. If it does so the licence will again lapse. A cancellation must be notified to the police and to the person who gave the interim authority notice, together with the authority's reasons for its decision. Subsection (6) (the lapse of the licence) is expressed to be subject to reinstatement in the case of an appeal. Subsection (7) provides that the authority cannot cancel an interim authority notice after a time when a transfer application has been made which provides for the transfer to have interim effect (sections 42 and 43).

***Section 49 – Supplementary provision about interim authority notice***

101. Subsections (1) to (3) provide that when a licensing authority receives an interim authority notice, it must send the person who sent that notice a copy of the premises licence (and summary) in the form it was in immediately prior to the licence lapsing, save that it will specify that person as the licence holder. Subsections (4) to (6) provide that anyone who became the licence holder under section 47 must notify the designated premises supervisor specified in the licence (if any) of the interim authority notice. It will be an offence to fail to do so, without reasonable excuse.



***Section 50 – Reinstatement of licence on transfer following death etc of holder***

102. Where a premises licence lapses under section 27 (death, incapacity or insolvency of the holder etc.) or by its surrender, but no interim authority notice has effect (as defined by subsection (2)), a person who may apply for the grant of a premises licence under section 16(1) may apply within seven days of the lapse for the transfer of the licence to him. This will cause the licence to be reinstated from the point at which the transfer application is received by the licensing authority. Subsection (3) provides that a reinstatement will only occur if the transfer application is one which is to have immediate effect under section 43. If the application is rejected or withdrawn, however, the licence lapses again.

***Section 51 – Application for review of premises licence***

103. Subsections (1) to (3) make provision for an interested party or responsible authority to apply, in such manner and form as may be prescribed and subject to the regulations that must be made by the Secretary of State about requirements as to notification and advertisements, to a relevant licensing authority for a review of the premises licence. For example, a local resident may consider that the measures taken by the licensee to prevent public nuisance are insufficient and request that they be reviewed. Similarly, the police may consider that the measures put in place to prevent crime and disorder are not being effective and need to be reviewed. Subsections (4) to (7) provide that the authority can at any stage reject a ground for review in an application unless it is relevant to at least one of the licensing objectives, or (if the application is made by an interested party) if it is frivolous, vexatious or repetitious (namely, identical or substantially similar to a ground for review already considered by the authority in a previous review, or in the determination of the application for grant of the licence, and a reasonable period has not passed since that time.) Under subsection (6) if a licensing authority rejects a ground for a review on the basis that it is frivolous or vexatious it must notify the applicant of its reasons.

***Section 52 – Determination of application for review***

104. By virtue of this section, the authority must hold a hearing to consider and determine any application for review and any relevant representations made in respect of it. In order for representations to be ‘relevant’ they must have been made by the holder of the premises licence, an interested party or a responsible authority (see the definitions in section 13) and they must relate to the licensing objectives. If the representations are made by an interested party there is a further requirement that the licensing authority does not consider them to be frivolous or vexatious. If it does, the authority is to explain its decision to the person who made the representations. The section provides that as a result of this review the authority must, if it considers it necessary for the promotion of the licensing objectives, either modify the conditions of the licence, exclude a licensable activity which the premises licence covers, remove the designated supervisor, suspend the licence for a period not exceeding 3 months or revoke the licence. If the licensing authority does not consider any of the steps to be necessary for the promotion of the licensing objectives, it will leave the licence untouched.
105. Subsection (10) requires the licensing authority to notify the outcome of a review and its reasons for so deciding to the licence holder, the applicant, the police and any person who has made relevant representations. Subsection (11) provides that the determination of an application for review will not take effect until any appeal has been disposed of, or if there is no appeal at the end of the period within which an appeal may be brought (see Schedule 5).

***Section 53 – Supplementary provision about review***

106. A local authority that is both the relevant licensing authority and a responsible authority – for example, where it carries out the functions of the local environmental health



authority – may apply for a review in its capacity as a responsible authority and determine that application in its capacity as licensing authority.

### ***Section 54 – Form etc of applications and notices under Part 3***

107. This section provides that, in relation to any application or notice in Part 3, regulations made by the Secretary of State may prescribe its form, the manner in which it should be made or given, and any information and documents that must accompany the notice or application.

### ***Section 55 – Fees***

108. By virtue of the exercise of the power under this section, premises licence holders may be required by regulations to pay an annual fee to the licensing authority, the amount and due date of which may be set by the Secretary of State. In addition, regulations may prescribe a fee in relation to any applications under Part 3 (other than applications for a review) or interim authority notices.

### ***Section 56 – Licensing authority's duty to update licence document***

109. Subsection (1) requires the relevant licensing authority to amend a premises licence to reflect any determination by the authority in relation to the licence, the lapsing of the licence or the disposal of an appeal. This ensures that there is always an accurate record of the licence.
110. In most cases the licensing authority will have sent the appropriate licence (or part of a licence) to the licensing authority, but subsections (2) to (4) provide that the authority may require holders to produce licences or the appropriate parts of licences for this purpose. Failure to do so without reasonable excuse will be an offence.

### ***Section 57 – Duty to keep and produce licence***

111. Under this section a premises licence holder must ensure that the licence or a certified copy is held on the premises to which it relates either by the licence holder or by an individual nominated for this purpose by the licence holder. A summary of the licence and notice of the individual responsible for the custody of the licence on the premises, if not the licence holder, must be displayed prominently on the premises. It will be an offence to fail to comply with these requirements or to fail to produce the licence or a certified copy to a constable or an authorised person (see section 13) on request. Subsection (9) provides that the requirements relate to the most up to date summary of the licence issued under section 23 or 56.

### ***Section 58 – Provision supplementary to section 57***

112. By virtue of this section, a copy of a premises licence or summary is to be certified as a true copy by either the relevant licensing authority, a solicitor or notary, or any other person the Secretary of State may prescribe. Subsection (3) provides that a certified copy will be presumed to be a true copy of the original unless the contrary is shown.

### ***Section 59 – Inspection of premises before grant of licence, etc***

113. This section provides that a constable or an authorised person (see the definition in section 13) may enter the premises to which an application relates, before that application has been determined, in order to assess the likely effect on the promotion of the licensing objectives of the grant of the application, or as the case may be, the effect of the activities authorised by a licence which is the subject of an application for review. In the case of an authorised person, evidence of authorisation to enter must be produced if requested. Where entry is sought in connection with an application for review both constables and authorised persons may use reasonable force to gain entry to premises if necessary. It is an offence under this section to obstruct an authorised

person exercising these powers. It is already an offence under the Police Act 1996 to obstruct a constable in the course of his duties.

## **PART 4: Clubs**

### **General**

114. This Part provides for arrangements for qualifying clubs (as defined in section 61), (such as the British Legion, working men's or cricket or rugby clubs) which meet specified criteria to carry on certain licensable activities at their premises. In this Act such activities are called "qualifying club activities". Such clubs are treated differently from other venues because they carry on activities from private premises (to which access is accordingly restricted) and because alcohol and regulated entertainment are provided otherwise than for profit.
115. This Part establishes a system of club premises certificates, issued by the relevant licensing authority, which authorise a qualifying club to carry on qualifying club activities. Qualifying clubs have a special status under licensing law; clubs holding certificates will be exempted from the requirement for any member or employee to hold a personal licence to supply or sell alcohol to members or guests. The general offence of supplying alcohol to people under 18 applies in clubs as it does elsewhere (see commentary on Part 7 below).
116. Applications for club premises certificates, like those for premises certificates, will be made by submitting the required documents to the licensing authority (namely, the operating schedule, a plan of the premises and a copy of the club's rules). The operating schedule sets out the activities proposed to be undertaken, the planned hours of opening, and the arrangements the club proposes taking to promote the licensing objectives (see section 4).
117. An application for a club premises certificate is subject to provision about advertisement and representations, similar to that for an application for a premises licence (see paragraph 60 above).

### ***Section 60 – Club premises certificate***

118. This section defines "club premises certificate" for the purposes of the Act.

### ***Section 61 – Qualifying clubs***

119. This section provides that a club is a qualifying club, in relation to a qualifying club activity, if it satisfies the general conditions (see section 62) and if, in relation to the supply of alcohol to its members or their guests, it also satisfies the additional conditions (see section 64).

### ***Section 62 – The general conditions***

120. This section sets out 5 general conditions for a club to be a qualifying club. They are that:
- nobody can be admitted as a member without an interval of at least two days after their nomination or application for membership;
  - a person who is admitted as a member other than by prior nomination or application must wait at least two days before enjoying the privileges of membership;
  - the club is established and conducted in good faith as a club (as to which, see section 63);
  - the club has at least 25 members;

- no alcohol is supplied, or intended to be supplied, on the club premises except by or on behalf of the club.

### ***Section 63 – Determining whether a club is established and conducted in good faith***

121. This section sets out the matters that must be taken into account in determining whether a club satisfies the condition of being established and conducted in good faith. These matters include restrictions on
- the club's freedom to purchase alcohol;
  - how money or property belonging to the club is used;
  - giving members information about the club's finances;
  - the club's accounts; and
  - the nature of its premises.
122. If a licensing authority determines that a club does not satisfy this condition, it must notify the club accordingly and give reasons for its decision.

### ***Section 64 – The additional conditions for the supply of alcohol***

123. This section sets out the three additional conditions that a club must satisfy if it is to be a qualifying club in relation to the supply of alcohol to members and their guests. These conditions are that the purchase and supply of alcohol should be managed by a committee, that nobody should receive at the expense of the club a commission or percentage deriving from purchase of alcohol, and that nobody should receive a pecuniary benefit from the supply of alcohol by the club to its members or their guests.

### ***Section 65 – Industrial and provident societies, friendly societies, etc.***

### ***Section 66 – Miners' welfare institutes***

124. These sections provide that, for the purposes of the Act, registered industrial and provident societies, registered and incorporated friendly societies and miners' welfare institutes will be treated as satisfying certain of the general conditions and additional conditions for being a qualifying club if certain requirements relating to their constitution and management are met. The effect of the provisions of these sections is that such bodies may apply for a club premises certificate.

### ***Section 67 – Associate members and their guests***

125. This section provides that references to club members' guests are to be taken to include associate members of the club, and associate members' guests. So such persons can have the benefit of licensable activities or qualifying club activities provided on club premises.

### ***Section 68 – The relevant licensing authority***

126. For the purposes of this Part, the "relevant licensing authority" is the authority in whose area a club's premises are situated (or mainly situated). (If the premises straddle two or more areas equally, applicants can nominate one of the authorities in question to act as the relevant licensing authority.) The effect of this section is to determine the authority to which an application for a club premises certificate may be made by a qualifying club.

### ***Section 69 – Authorised persons, interested parties and responsible authorities***

127. This section defines the terms 'authorised persons', 'interested party' and 'responsible authority'. The significance of designation as an 'authorised person' is that it confers a

role in the inspection of premises in connection with their use for licensable activities. An interested party or responsible authority may make representations to a licensing authority in relation to the grant, variation or review of a club premises certificate.

128. This Part also provides that applicants for club premises certificates must give notice to responsible authorities and advertise applications in a manner likely to bring them to the attention of the interested parties.

### ***Section 70 – Other definitions relating to clubs***

129. This section defines ‘secretary’ for the purposes of this Part of the Act as any person performing the duties of a secretary.

### ***Section 71 – Application for club premises certificate***

130. Subsections (1) to (4) provide that applications for a club premises certificate for premises which are occupied by and used for the purposes of a club may be made by a qualifying club to the relevant licensing authority (see section 68). Applications are to be made in the form prescribed in regulations made by the Secretary of State and accompanied by a fee similarly prescribed.
131. Subsection (5) provides that the operating schedule will set out various details relating to the operation of particular club premises. Those details include the qualifying club activities to be carried out, the proposed hours of those activities and other times when it is proposed that the premises will be open to members and their guests, whether, where the qualifying club activities include the supply of alcohol, the supplies will be for consumption on or off the premises or both and a statement of how it is intended to promote the licensing objectives. The significance of the operating schedule is that if the application for the club premises certificate is granted, the details will be incorporated into the certificate, which will set out the permitted activities and the limitations on them.
132. Subsection (6) provides that the Secretary of State must make regulations setting out how applications must be notified and advertised, and specifying when interested parties and responsible authorities can make representations to the authority.

### ***Section 72 – Determination of application for club premises certificate***

133. Subsections (1) and (2) provide that unless relevant representations are made in respect of an application for a club premises certificate, a licensing authority must grant a certificate in accordance with any such application which is duly made. That certificate will be subject to conditions consistent with those included in the application by the applicant in the operating schedule, and subject to the mandatory conditions set out in sections 73 and 74.
134. Subsection (3), together with subsections (6) to (8), provides that where relevant representations are made, licensing authorities are required to hold a hearing. In order for representations to be ‘relevant’ they must have been made by an interested party or a responsible authority (see the definitions in section 69) and they must relate to the likely effect of the grant of the certificate on the promotion of the licensing objectives. If the representations are made by an interested party there is a further requirement that the licensing authority does not consider them to be frivolous or vexatious (but if it does, the authority is to explain its decision to the person who made the representations). The need for a hearing can be dispensed with by agreement of the authority, the applicant for the certificate and all of the parties who have made relevant representations.
135. Subsection (4) provides that when a hearing is held (or dispensed with as indicated above), the licensing authority must, if it considers it necessary for the promotion of the licensing objectives, attach conditions to any certificate granted, rule out any of the qualifying club activities applied for, or reject the application. Otherwise the licensing

authority will grant the certificate in the terms sought in the application (together with any mandatory conditions).

136. Subsection (10) provides that a licensing authority may, within the same certificate, impose different conditions on different parts of the premises, or impose different conditions in relation to different qualifying club activities.

### ***Section 73 – Certificate authorising supply of alcohol for consumption off the premises***

By virtue of this section, a club premises certificate may authorise the supply of alcohol by a club to its members for consumption off the premises only in certain circumstances. The sale by retail of alcohol to a guest of a member for consumption off the premises is not a qualifying club activity.

By virtue of this section -

- A club premises certificate may not authorise the supply of alcohol for consumption off the premises unless it also authorises its supply to members for consumption on the premises
- A club premises certificate authorising the supply of alcohol for consumption off the premises must include three conditions. These are:
  - (i) the supply must be made at a time when the premises are open for the purposes of supplying alcohol, in accordance with the club premises certificate, to members of the club for consumption on the premises
  - (ii) any alcohol supplied for consumption off the premises must be in a sealed container
  - (iii) any supply of alcohol for consumption off the premises must be made to a member of the club in person.

### ***Section 74 – Mandatory condition: exhibition of films***

137. Where a club premises certificate authorises the exhibition of a film this section makes it mandatory for a condition to be included in the certificate requiring the admission of children to films to be restricted in accordance with recommendations given either by a body designated under section 4 of the Video Recordings Act 1984 or by the licensing authority itself. When the Act was passed the only body designated under section 4 of the Video Recordings Act 1984 was the British Board of Film Classification.

### ***Section 75– Prohibited conditions: associate members and their guests***

138. This section provides that no conditions attached to a club premises certificate may prevent the sale by retail of alcohol or the provision of regulated entertainment to associate members of the club or their guests, if those activities are permitted by the rules of the club.

### ***Section 76– Prohibited conditions: plays***

139. Under this section, in the case of a club premises certificate authorising the performance of a play (see Schedule 1), licensing authorities will not be able to attach conditions relating to the nature of the play performed or the manner of its performance, unless they are justified as a matter of public safety. This section reproduces for England and Wales the effect of section 1(2) of the Theatres Act 1968.

### ***Section 77 – Grant or rejection of application for club premises certificate***

140. By virtue of this section a licensing authority which grants or refuses a club premises certificate must notify its decision to the applicant, to any person who made representations and to the chief officer of police for the area in which the premises are situated. If the application is granted, the licensing authority must also notify those

parties of any steps it took in response to relevant representations and give its reasons. It must issue the club premises certificate, and a summary of that certificate, to the applicant. If the application is rejected, the licensing authority must notify those parties of the reasons for its decision.

### ***Section 78 - Form of certificate and summary***

141. This section makes provision for a club premises certificate and the summary of that certificate to be in a form prescribed in regulations made by the Secretary of State. Subsection (2) lists the basic requirements which those regulations must include as to the content of the certificate. Under section 94, the summary must be displayed at the relevant premises.

### ***Section 79 – Theft, loss etc. of certificate or summary***

142. Subsection (1) provides that a club may apply to the licensing authority for a copy of a club premises certificate or summary if that certificate or summary has been lost, stolen, damaged or destroyed. Subsection (3) provides that if the licensing authority is satisfied of the veracity of such an application, it must then issue a certified copy of that certificate. Where a certificate has been lost or stolen, there is an additional requirement that the club has reported this to the police. A fee may be prescribed for the issue of replacement documents. The Act applies in relation to a copy in the same way as it applies to the original.

### ***Section 80 – Period of validity of club premises certificate***

143. By virtue of this section a club premises certificate has effect until it is withdrawn (see section 88 and 90) or it lapses on surrender by the club (see section 81). Subsection (2) provides that a club premises certificate does not have effect during periods of suspension.

### ***Section 81 - Surrender of club premises certificate***

144. This section provides that a club may voluntarily surrender its club premises certificate by returning it to the authority accompanied by a notice of surrender. If it is impractical to return the certificate (e.g. where it has been lost), a statement to this effect must be sent with the notice of surrender. A club premises certificate lapses when the authority receives the notice of surrender.

### ***Section 82 – Notification of change of name or alteration of rules of club***

145. Under this section, the secretary of a club must notify the relevant licensing authority of any change in the club's name or its rules. Notification of such a change must be accompanied by the certificate (unless that is impracticable and then a statement of the reasons as to why that is the case must be provided) and any fee that may have been prescribed. The licensing authority must amend the club premises certificate to record any such change, but a certificate may not be amended under this section so as to change the premises to which it relates. Failure to notify the authority of such a change within 28 days is an offence.

### ***Section 83 – Change of relevant registered address of a club***

146. Under this section, the secretary of a club may notify the relevant licensing authority of any change in the club's address, and must do so if the club ceases to make use of the address which it has given as its relevant registered address. Notification of such a change must be accompanied by the certificate (unless that is impracticable and then a statement of the reasons as to why this is the case must be provided) and any fee that may have been prescribed. The licensing authority must amend the club premises certificate to record any such change. Failure by a club to notify the authority of a change of address when it has to do so is an offence.



***Section 84 – Application to vary club premises certificate***

***Section 85 – Determination of application under section 84 and***

***Section 86 – Supplementary provision about applications under section 84***

147. Under these sections a club can apply, in the prescribed form and manner, to vary its club premises certificate in any way other than to vary substantially the premises to which it relates. Any such application may be subject to the payment of a fee and is subject to regulations under section 71 relating to advertising requirements. The application must also be accompanied by the club premises certificate (unless that is impracticable, in which case a statement of reasons must be provided).
148. Under section 85 the licensing authority must make the variation as applied for unless relevant representations are made, in which case a hearing must be held. In order for representations to be ‘relevant’ they must have been made by an interested party or a responsible authority (see the definitions in section 69) and they must relate to the likely effect on the promotion of the licensing objectives if the application were to be granted. If the representations are made by an interested party there is a further requirement that the licensing authority does not consider them to be frivolous or vexatious (but if it does the authority is to explain its decision to the person who made the representations). The need for a hearing can be dispensed with by agreement of the authority, the applicant for the variation and all of the parties who have made relevant representations.
149. By virtue of subsection (3) of section 85, in any case where relevant representations have been made, the licensing authority must, if it considers it necessary for the promotion of the licensing objectives (see section 4), modify the conditions of the certificate or reject the application for variation. Otherwise, the licensing authority must grant the variation in the terms sought (subject to the mandatory conditions). The authority must notify its decision to the applicant, the police and any person who has made relevant representations, and must give reasons for its decision. A variation of a club premises certificate may impose different conditions on different parts of the premises, or impose different conditions in relation to different qualifying club activities.

***Section 87 – Application for review of club premises certificate***

150. Subsections (1) to (3) make provision for an interested party, responsible authority or a member of the club in question to apply (in such manner and form as may be prescribed and subject to any regulations made about requirements as to notification and advertisements) to a licensing authority for a review of the club premises certificate. Subsections (4) to (7) provide that the authority can at any stage reject a ground for review in an application if it is not relevant to any of the licensing objectives, or (where the application is made by an interested party) if it is frivolous, vexatious or repetitious. (A ground for review is a repetitious if it is identical or substantially similar to a ground for review already considered by the authority in a previous review, or in the determination of the application for grant of the certificate, and a reasonable period has not passed since that time).

***Section 88 – Determination of application for review and***

***Section 89 – Supplementary provision about review***

151. Under the provisions of these sections the licensing authority must hold a hearing to consider and determine the application for a review and any relevant representations made in respect of it. Having regard to those matters, the authority must, if it considers it necessary for the promotion of the licensing objectives modify the conditions of the certificate or the activities which it covers, suspend the authority of the certificate for a

period not exceeding 3 months or revoke the certificate. Otherwise the certificate will not be altered.

152. **Section 88** provides that for representations to be relevant they must relate to one or more of the licensing objectives and be made by the club, a responsible authority or an interested party. If made by an interested party, the authority must be satisfied that they are not frivolous or vexatious. If the authority considers that they are, it must inform the party making the representations of its decision. The authority must notify the applicant, the club, any person who made relevant representations and the police of its decision and its reasons.
153. A local authority that is both the relevant licensing authority and a responsible authority – for example, where it carries out the functions of the local environmental health authority – may apply for a review in its capacity as a responsible authority and determine that application.

#### ***Section 90 – Club ceasing to be a qualifying club***

154. A club which ceases to meet the criteria set out at sections 61, 62 and 63 and 64 will have its certificate withdrawn by the licensing authority. Where a certificate is withdrawn because the club's membership has fallen below the required minimum (currently 25), the withdrawal will not have effect until three months after the authority gives notice and does not have effect if, by the end of those three months, the membership has risen to at least the required minimum.
155. A justice of the peace may issue a search warrant authorising a constable to enter club premises (if necessary using force) to search them if he is satisfied that a club holding a club premises certificate ceases to meet the criteria necessary to be a qualifying club and evidence of such fact may be obtained at the club premises.

#### ***Section 91 – Form etc. of applications and notices under Part 4***

156. This section allows for the detail of the form, manner and content of applications, and any accompanying documents, to be set out in regulations.

#### ***Section 92 – Fees***

157. Clubs may be required by regulations to pay an annual fee to the licensing authority, the amount and due date of which may be prescribed, or fees in relation to any applications (other than an application for a review) or notices made under this Part.

#### ***Section 93 – Duty to provide licensing authority with club premises certificate***

158. A club must produce the certificate at the request of the licensing authority. Failure to do so without reasonable excuse is an offence.

#### ***Section 94 - Duty to keep and produce certificate***

#### ***Section 95 - Provision supplementary to section 94***

159. Clubs must ensure that the certificate is held on the relevant premises, and that a summary of the certificate and notice of the nominated individual responsible for it on the premises are displayed prominently. Failure to comply with those provisions is an offence.
160. A police officer or authorised person (see section 69) may require production of the certificate; failure to produce it is an offence.

***Section 96 - Inspection of premises before grant of certificate etc.***

161. This section makes provision for a constable authorised by the chief officer of police or an authorised person (see section 69) to enter premises to which an application for a club premises certificate relates, or to which an application for a variation or a review of the certificate relates and inspect those premises, having given the club 48 hours notice. It is an offence to obstruct an authorised person exercising the power this section confers. It is already an offence under the Police Act 1996 to obstruct a police officer in the course of his duty.

***Section 97 - Other powers of entry and search***

162. This section provides that a constable may enter and search club premises where he has reasonable cause to believe that an offence in respect of controlled drugs has been, is being, or is about to be, committed there or there is likely to be a breach of the peace.

**PART 5: Permitted temporary activities**

163. **Part 5** makes provision for a system that would allow individuals – “premises users” – to carry out licensable activities on a temporary basis (for a period not exceeding 96 hours), subject to various conditions and limits attaching to the number of events which may be permitted. Different limits apply depending on whether or not the person carrying out licensable activities holds a personal licence (see Part 6) and the frequency of use of the premises.
164. Examples of circumstances under which an individual might make use of the arrangements could include:
- where a **personal licence holder** wishes to carry out one or more licensable activities at premises not covered by a premises licence relating to those activities. For example, a publican may be engaged to run a temporary bar for a wedding at a venue not licensed for the sale of alcohol, or may wish to provide a temporary disco in premises licensed for the sale of alcohol but not for the provision of regulated entertainment. For personal licence holders, the number of occasions which could be covered by these arrangements in any one year would be subject to a limit of 50.
  - where **an individual who does not hold a personal licence** wishes to carry out one or more licensable activities at any premises, regardless of whether they are covered by a premises licence relating to those activities. For example, an individual may wish to run a bar and provide a band at a party to celebrate a 50<sup>th</sup> wedding anniversary. This may be done by the same person on no more than five occasions in any one calendar year.

In both cases, the arrangements would only apply where the number of attendees at the event is lower than 500. In addition, no premises may be used more than 12 times in any one calendar year by virtue of this Part, with an overall maximum of 15 days in any one year on which temporary events may take place at any particular premises.

***Section 98 – Meaning of ‘permitted temporary activity’***

165. This section provides that a ‘permitted temporary activity’ is one that is carried on in accordance with a temporary event notice given to the relevant licensing authority (see section 99 paragraph 166 below) and which satisfies the following conditions:
- a) the temporary event notice has been duly acknowledged by the licensing authority (see section 102, paragraph 172 below) and notified to the police (see section 104, paragraph 174 below)
  - b) the temporary event notice has not been subsequently withdrawn by the individual giving the notice and

- c) the licensing authority has not issued a counter-notice. A counter-notice would be issued, if necessary, following a hearing of any objections raised by the police to the effect that the crime prevention objective would be undermined by allowing the activity to go ahead (see section 105, paragraph 175 below) or if the permitted limits attaching to the person giving the notice or the premises would be exceeded (see section 107, paragraph 177 below)

### ***Section 99– The relevant licensing authority***

- 166. This section defines the licensing authority for the purposes of this Part and as a consequence determines the authority, or authorities if the premises straddles more than one licensing authority area, to which a temporary event notice must be given.

### ***Section 100 – Temporary event notice***

- 167. This section provides that an individual, known as a premises user, who proposes to carry on a licensable activity for a temporary period of not more than 96 hours may submit a notice to the relevant licensing authority of the proposal for the event. Such notice is defined as a temporary event notice. The premises user must be at least 18 years old.
- 168. Subsections (4) and (5) provide that the notice must be in a form prescribed in regulations by the Secretary of State and set out certain details about the proposed event:
  - a) the licensable activities that are to be carried out
  - b) the total length of the event – which must not exceed 96 hours
  - c) the times during the event that the licensable activities are to be carried out (for example, where an individual wishes to organise an event that covers 36 hours and where the bar will be open for two evenings within that time).
  - d) the maximum number of people to be allowed on to the premises at any one time – which must be less than 500
  - e) whether any alcohol sales are to be made for consumption on or off the premises (or both)
  - f) any other information that may be prescribed by regulations.
- 169. Subsection (6) requires that if the licensable activities proposed in the notice include the supply of alcohol, the notice must include a condition that all such supplies will be made by, or under the authority of, the premises user. The temporary event notice must be given to the licensing authority at least ten working days before the event. Before the time of the event the licensing authority must acknowledge the notice, the police must consider the notice and decide whether to give notice of objection and if the police object, the authority must, if necessary, convene a hearing, to decide whether to serve a counter notice. Although ten working days is the minimum specified, it is anticipated that in most circumstances greater notice will be given. The temporary event notice must be submitted in duplicate and accompanied by any fee prescribed in regulations made by the Secretary of State
- 170. Subsection (8) provides that the Secretary of State may by order (subject to affirmative resolution procedure) amend the limits as to the length of time permissible for any single temporary event and the number of people who may attend an event. This will enable the Secretary of State to change the limits in response to experience of the working of the new regime.

***Section 101 – Minimum of 24 hours between event periods***

171. This section provides that there must be a minimum period of 24 hours between temporary events held on the same premises by a premises user, or held by that user and another person who is related to, associated with or in business with that user. This prevents a premises user holding numerous consecutive temporary events as a means of avoiding an application for a premises licence. If a temporary event takes place on premises that are included within or include other premises where another temporary event takes place, then the two events are deemed to take place on the same premises.

***Section 102 – Acknowledgement of notice***

172. Under this section, the licensing authority must acknowledge the temporary event notice given to it by a premises user by returning the duplicate notice to the premises user within a specified period. However, subsection (3) provides that an acknowledgement is not to be given if the licensing authority has already served a counter notice on the premises user under section 107 to the effect that the permitted number of events would be exceeded if the notified event took place.

***Section 103– Withdrawal of notice***

173. This section provides that a premises user can withdraw a temporary event notice up to 24 hours before the event is scheduled to take place. Once withdrawn, the notice does not count towards the limits on the number of temporary event notices that may be submitted during a calendar year.

***Section 104 – Objection to notice by police***

***Section 105 - Counter notice following police objection and***

***Section 106 - Modification of notice following police objection***

174. **Section 104** provides that no later than ten working days before the beginning of the event period proposed in the temporary event notice, the premises user must give a copy of the notice to the chief officer of police in the relevant area. If the police are of the view that allowing the event to proceed would undermine the crime prevention objective, they must notify (an objection notice) the premises user and the relevant licensing authority, stating their reasons, no later than 48 hours after receipt of the copy of the notice.
175. **Section 105** provides that, if the police object, the licensing authority must hold a hearing to consider the objection notice unless all parties agree that a hearing is unnecessary. If the authority accepts the police objection it must issue a counter-notice to the premises user in which case the event cannot proceed. If the authority does not accept the police objection it must inform the police. Any decision or counter-notice must be issued to the premises user at least 24 hours before the specified event period. A failure to do so will result in the premises user being able to proceed with the event.
176. **Section 106** provides that, in cases where the police have given an objection notice, at any point between notification and the hearing the police and premises user may agree to modify the temporary event notice in order that it no longer undermines the promotion of the crime prevention objective. When temporary event notices are modified, the notice of objection by the police is withdrawn, and the modified temporary event notice has effect.

***Section 107 - Counter notice where permitted limits exceeded***

177. Subsection (1) requires a licensing authority to issue a counter-notice on receipt of a temporary event notice where

- the premises user is a personal licence holder who has already given 50 temporary event notices within the same calendar year as the specified event period, or
  - when the premises user does not hold a personal licence, but has already given five temporary event notices in that year, or
  - where twelve temporary event notices have been given in respect of the same premises in that year, or
  - where temporary event notices are given for events at the same premises falling on more than 15 days in a year.
178. Subsection (12) gives the Secretary of State power by order to amend the limits in this section as to the numbers of temporary event notices that can be given by any person or in respect of any premises, or the number of days in any year when temporary events can take place at any premises. Again the orders are subject to the affirmative resolution procedure.
179. The effect of giving such a counter notice is that the proposed event is not a permitted temporary activity and is not authorised to proceed.

### ***Section 108 – Right of entry where temporary event notice given and***

### ***Section 109 – Duty to keep and produce temporary event notice***

180. Constables and officers of a licensing authority will be able to enter premises to assess the likely impact of a temporary event notice on the promotion of the crime prevention objective. The officer of a licensing authority must, if requested, produce evidence of his authority. It is an offence to obstruct such an officer exercising his powers under this section. It is already an offence to obstruct a constable in the exercise of his duty (see Police Act 1996).
181. The premises user must ensure that the notice is displayed at the premises or is kept there under his control or the control of a person nominated by him. In the latter case, a notice to that effect must be displayed at the premises. It is an offence for the premises user to fail to comply with this requirement. It is also an offence for a person who holds the premises licence under such arrangements to fail to produce it to a constable or an officer of a licensing authority when requested to do so.

### ***Section 110 – Theft, loss etc. of temporary event notice***

182. This section provides that premises users may apply to the licensing authority that acknowledged the temporary event notice for a copy of that notice if the notice has been lost, stolen, damaged or destroyed. If lost or stolen, the premises user is obliged to notify the police before a copy will be issued. There may be a fee prescribed for the issue of replacement documents. By virtue of subsection (2) an application for a copy of the notice cannot be made later than one month after the event. Subsection (6) provides that the copy of the notice will have effect as if it were the original.

## **PART 6: Personal Licences**

183. **Part 6** establishes a regime for the supply of alcohol to be regulated by the granting of personal licences to individuals. The licensing of individuals separately from the licensing of premises permits the movement of personal licence holders from one set of premises to another. The Act also provides the police and licensing authorities with powers to deal with errant personal licence holders.
184. The personal licence is to relate only to the supply of alcohol (as defined in section 111(2)) and not to other activities covered by the Act such as regulated entertainment or the provision of late night refreshment, for which no personal licence



will be required. A personal licence does not authorise its holder to supply alcohol anywhere, but only from premises with a premises licence.

185. Where premises have a premises licence authorising the supply of alcohol, a personal licence must be held by the nominated individual responsible for the day-to-day running of the licensed premises, known as the designated premises supervisor. More than one individual at the licensed premises may hold a personal licence, although it will not be necessary for all staff to be licensed. But, all supplies of alcohol under a premises licence must be made by or under the authority of a personal licence holder.
186. A personal licence is issued for ten years in the first instance and there will be a presumption in favour of renewal if the licence holder has not been convicted of any offence.
187. The initial grant of a personal licence will additionally be subject to the possession of an accredited qualification. However, during the transitional period, existing holders of justices' licences for the sale of alcohol, will not be required to obtain an accredited qualification (see paragraph 23 of Schedule 8). Rather, there will be a general presumption that a personal licence will be granted automatically, except in limited circumstance (for example following representations by the police that to do so would undermine the crime prevention objective).
188. Convictions for offences which are relevant for the purposes of the determination of applications for the grant or renewal of a personal licence include:
- those involving serious crime
  - those involving serious dishonesty
  - those involving the supply of drugs
  - certain sexual offences
  - offences created by the Act.

(see paragraph 191 below on section 113 and Schedule 4).

### ***Section 111 – Personal licence***

189. For the purposes of the Act, this section defines a personal licence as a licence granted by a licensing authority and permitting an individual to sell alcohol by retail or to supply alcohol by or on behalf of a club (in the latter case this would relate only to a supply authorised under a premises licence).

### ***Section 112 – The relevant licensing authority***

190. This section provides that the relevant licensing authority in relation to a personal licence is the authority which originally granted the licence. The effect of this is that if a personal licence holder works in or moves to the area of a different licensing authority, the relevant licensing authority for the purpose of renewals etc will be unchanged.

### ***Section 113 – Meaning of “relevant offence” and “foreign offence”***

191. For the purposes of Part 6 of the Act, relevant offences are defined as offences listed in Schedule 4. In subsection (2) the Secretary of State is given a power (subject to the negative resolution procedure) to amend that list. Subsection (3) provides that for the purposes of Part 6 of the Act, a ‘foreign offence’ is defined as an offence (other than a relevant offence) under the law of anywhere outside England and Wales. The significance of designation as a ‘relevant offence’ is that a conviction for such an offence (or a comparable foreign offence), unless spent, must be taken into account by a licensing authority in its consideration of an application for the grant or renewal of a personal licence (see sections 120 and 121). If an existing personal licence holder

is convicted of a relevant offence, his licence may be forfeited or suspended (see section 129).

#### ***Section 114 – Spent convictions***

192. This clause provides that convictions for relevant or foreign offences must be disregarded when spent under the Rehabilitation of Offenders Act 1974 for the purposes of Part 6 of the Bill.

#### ***Section 115 – Period of validity of personal licence and***

#### ***Section 116 – Surrender of personal licence***

193. **Section 115** provides that a personal licence is valid for 10 years unless before then it is surrendered by the holder, revoked by the licensing authority or forfeited or suspended by the court. At the end of the 10 year period, the holder may apply for renewal to the licensing authority which issued the original licence and the authority can renew the licence for a further ten years or refuse the application for renewal. Licences do not have effect during periods of suspension. In some circumstances, a licence may extend beyond 10 years, pending a renewal or disposal of an appeal; for example, where an application for renewal of a personal licence has not been determined prior to the expiry of the 10 year validity period (see section 119). Section 116 provides that a personal licence holder may surrender his licence and sets out the procedural requirements of such a surrender.

#### ***Section 117 – Application for grant or renewal of personal licence***

#### ***Section 118 – Individual permitted to hold only one personal licence***

#### ***Section 119 – Licence continued pending renewal***

194. These sections set out the steps an individual must take to apply for the grant or renewal of a personal licence. An application for the grant of a personal licence must be made, ordinarily, to the authority for the area in which the applicant is normally resident. Applications for renewal are to be made to the licensing authority which originally granted the licence.
195. All applications must be made in the prescribed form and accompanied by the prescribed fee, information and documents. Applications for renewal can only be lodged within a two-month period beginning three months before the licence's expiry. If the licence expires before the application for renewal has been determined by the licensing authority, the licence remains in effect until a decision is made.
196. Only one licence can be held by a single individual at any one time.

#### ***Section 120 – Determination of application for grant***

197. This section prescribes the manner in which a licensing authority must determine an application for a personal licence. The criteria for the grant of a licence are that:
- the applicant is at least 18 years old
  - he possesses an accredited licensing qualification or is of a prescribed description (see paragraph 200)
  - he has not had a personal licence forfeited in the previous five years
  - he has not been convicted of any relevant offences (see Schedule 4) or foreign offences (see paragraph 191)

198. Subsections (3) to (6) provide that the licensing authority must reject the application for a personal licence if the applicant fails to meet one of the first three eligibility criteria. If these are met but the applicant has been convicted of a relevant offence or a foreign offence, the licensing authority may grant the personal licence only after consulting the police. The chief officer of police must have regard to the conviction for any relevant offence, or for any foreign offence which he considers comparable to a relevant offence. Within 14 days of being notified, the chief officer must give to the licensing authority notice of objection to the grant of a licence if he is satisfied that granting the licence would undermine the prevention of crime and disorder (referred to here as “the crime prevention objective”). In the absence of such an objection, the licensing authority must grant the application.
199. When an objection is lodged by the police, the licensing authority must hold a hearing to decide whether to reject or grant the licence, and must give reasons for its decision. The need for a hearing may be dispensed with by agreement of the authority, the applicant and the police.
200. For the purpose of this section, the ‘licensing qualification’ must be recognised by the Secretary of State (by administrative action) or must be an equivalent qualification obtained in Scotland, Northern Ireland or an EEA state other than the UK.

### ***Section 121 – Determination of application for renewal***

201. The licensing authority must renew a personal licence except where the applicant has been convicted of one or more relevant offences since the original grant of the licence or its last renewal. If such a conviction has occurred, the licensing authority must consult with the police and give them the opportunity to object to the renewal of the personal licence where they are satisfied that renewal would undermine the crime prevention objective. Where there is no objection the renewal must be granted. If the police object, a hearing must be held (unless the licence holder, the police and the licensing authority agree that this is unnecessary) and the authority must give the reasons for its decision.

### ***Section 122 – Notification of determinations***

202. This section requires the licensing authority to notify the applicant and relevant chief officer of police of any decision to grant an application, explaining the decision in cases where an objection notice was given by the police. Notice of decisions to reject applications and the reasons for the decision must be given to applicants and the police.

### ***Section 123 – Duty to notify licensing authority of convictions during application period***

203. Applicants convicted of a relevant offence or foreign offence (see section 113) in the period between an application being made and its determination (or withdrawal) must notify the relevant licensing authority of the conviction as soon as possible. Failure to do so is an offence.

### ***Section 124 – Convictions coming to light after grant or renewal***

204. This section applies where an applicant for the grant or renewal of a personal licence is convicted of a relevant offence in the period between the application being made and its determination but knowledge of the conviction emerges only after the licence has been granted or renewed. The licensing authority may revoke a personal licence, after consultation with the police.
205. The section requires the licensing authority to consult the police on becoming aware of such a conviction. The police will then have the opportunity to give the licensing authority notice that they object to the continuation of a licence where they believe that that would undermine the crime prevention objective. If the police object, a hearing must be held by the licensing authority (unless the licence holder, the police and the

licensing authority agree that this is unnecessary). The licensing authority must give the reasons for its decision to the offender and to the police. A decision under this section does not have effect pending an appeal.

### ***Section 125 – Form of personal licence***

206. This section makes provision for a personal licence to be in a prescribed form and lists the basic requirements as to the content of a licence, including a record of any convictions for relevant or foreign offences.

### ***Section 126 – Theft, loss, etc. of personal licence***

207. Personal licence holders will be able to apply to the licensing authority that issued the licence for a copy if the licence has been lost, stolen, damaged or destroyed. If lost or stolen, this must be reported to the police before a copy will be issued. There may be a fee prescribed for the issue of replacement documents. The Act applies to a copy in the same way as it applies to the original.

### ***Section 127 – Duty to notify change of name or address***

208. This section provides that the holder of a personal licence must notify the licensing authority of any change of name or address. Failure to do so is an offence.

### ***Section 128 – Duty to notify court of personal licence***

### ***Section 129 – Forfeiture or suspension of licence on conviction for relevant offence***

209. Where the holder of a personal licence is charged with a relevant offence, he must produce the licence to the court before the case against him is first heard in court (or if that is not possible, he must explain why). If an individual is granted a personal licence after being charged, he must produce the licence to the court (or explain why he cannot). A licence holder must also notify the court if, after having first produced his licence, the licence is renewed, surrendered or revoked. Failure to comply with any of these requirements is an offence.
210. Upon conviction of a personal licence holder of a relevant offence, the court may forfeit the personal licence or suspend it for up to 6 months. An order to forfeit or suspend the licence may itself be suspended by the convicting court allowing the licence to continue in force pending an appeal.

### ***Section 130 – Powers of appellate court to suspend order under section 129***

211. Orders made under section 129 may be suspended by the court on an appeal or an application for leave to appeal or an application for a quashing order by a defendant, allowing him to continue trading, if appropriate, while the appeal is being considered. If the court suspends the order it must notify the relevant licensing authority of that fact.

### ***Section 131 – Court's duty to notify licensing authority of convictions***

212. This clause sets out the obligations of the court to the relevant licensing authority where a personal licence holder is convicted of a relevant offence. An appropriate officer of the court (defined in subsection (5)) must notify the relevant licensing authority of:
- the licence holder's name and address
  - the nature and date of the conviction
  - details of any sentence passed.

213. Where a conviction is quashed or a sentence altered on appeal, or where the Court of Appeal takes action in relation to a sentence it regards as unduly lenient, the court concerned must notify the relevant licensing authority.

***Section 132 – Licence holder’s duty to notify licensing authority of convictions***

214. This section requires that, where the holder of a licence is convicted of a relevant offence or foreign offence, and the courts are not aware of the existence of the licence, the holder must notify the licensing authority as soon as possible about the conviction and the outcome of any appeal against a conviction. Failure to comply with this section is an offence.

***Section 133 – Form etc. of applications and notices under Part 6***

215. This section allows for the detail of the form, manner and content of applications, and any accompanying documents or fees, to be set out in regulations.

***Section 134 – Licensing authority’s duty to update licence document***

216. Where certain changes have been made to the terms or effect of a personal licence, (for example, where it has been renewed, or a change of details has been notified), the licensing authority must make the necessary amendments to the licence.
217. The licensing authority may require the personal licence holder to present the licence for amendment. Failure by the licence holder to comply with this obligation, without reasonable excuse, is an offence.

***Section 135 – Licence holder’s duty to produce licence***

218. This section applies where the holder of a personal licence is on premises to sell, or authorise the sale of, alcohol by virtue of a premises licence or temporary event notice. A constable or officer of the licensing authority may require the holder to produce his personal licence. Failure to produce it is an offence.

**PART 7: Offences**

***Section 136 – Unauthorised licensable activities***

219. This section makes it an offence to carry on or attempt to carry on a licensable activity without the authorisation provided by, as appropriate, a premises licence, a club premises certificate or a temporary event notice. It is also an offence knowingly to allow such an activity to be carried on. This provision is central to the enforcement of the licensing regime introduced by the Act.
220. Certain activities which would otherwise fall within the definition of “licensable activities” in section 1(1) are excluded from that definition by sections 173 to 175. Subsection (2) provides that an offence is not committed under section 136 if the only involvement of a person in the provision of regulated entertainment is his performance etc.

***Section 137 – Exposing alcohol for unauthorised sale***

221. This section makes it an offence to expose alcohol for sale by retail (see the definition in section 192) in circumstances where the sale would not be under and in accordance with a premises licence, club premises certificate or temporary event notice. The effect of this provision is that an offence can be committed in a case where no sale or attempted sale is in fact made. Subsection (4) provides that a court which convicts a person of this offence may order the confiscation of the alcohol in question and its containers, which may then be either destroyed or dealt with as the court orders.

***Section 138 – Keeping alcohol on premises for unauthorised sale***

222. This section makes it an offence to keep alcohol on premises with the intention of selling it by retail (see the definition in section 192) or supplying it (by or on behalf of a club or to the order of a member of the club) unless that sale or supply would be under and in accordance with an authorisation. Subsection (5) provides that a court which convicts a person of this offence may order the confiscation of the alcohol in question and its containers, which may then be either destroyed or dealt with as the court orders.

***Section 139 - Defence of due diligence***

223. This section provides that a person who is charged with the offence of carrying on an unauthorised licensable activity, exposing alcohol for unauthorised sale or keeping alcohol in premises for unauthorised sale or supply has a defence if his act or omission was mistaken, was due to his relying on information given to him, was the fault of another person or was due to some cause beyond his control, and he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

***Section 140 – Allowing disorderly conduct on licensed premises etc.***

224. This section makes it an offence knowingly to allow disorderly conduct on licensed premises and thus re-enacts part of the existing offences in sections 172(1) and 172A(1) of the Licensing Act 1964. Subsection (2) of this section sets out the categories of person who may commit the offence. These include any person who works at the premises in a capacity that gives him the authority to prevent the conduct, a premises licence holder or designated premises supervisor, an officer or member of a club who is present at the time of the disorder and who has authority to prevent it, and a premises user (see the definition in section 100 (2)) who has given a temporary event notice in respect of those premises.

***Section 141 – Sale of alcohol to a person who is drunk***

225. This section makes it an offence to sell or attempt to sell alcohol to a person who is drunk, or to allow alcohol to be sold to such a person, on relevant premises (see the definition in section 159). The section thus effectively re-enacts the existing offences in sections 172(3) and 172A(3) of the Licensing Act 1964. Subsection (2) of this section sets out the categories of person who may commit the offence. These include any person who works at the premises in a capacity that gives him the authority to sell the alcohol, a premises licence holder or designated premises supervisor, an officer or member of a club who is present at the time of the sale and who has authority to prevent it, and a premises user (see the definition in section 100(2)) who has given a temporary event notice in respect of those premises. Subsection (3) provides that the offence also covers supplies of alcohol by or on behalf of a club to or to the order of a member of the club.

***Section 142 – Obtaining alcohol for a person who is drunk***

226. This section makes it an offence knowingly to obtain or attempt to obtain alcohol for consumption on relevant premises (see the definition in section 159) by a person who is drunk. The section thus effectively re-enacts the existing offence in section 173(1) of the Licensing Act 1964.

***Section 143– Failure to leave licensed premises etc.***

227. This section provides that a person who is drunk or disorderly commits an offence if he fails to leave relevant premises (see the definition in section 159) at the request of a police constable or a person listed in subsection (2), or if he enters (or tries to enter) such premises when asked not to by such a person. No offence will be committed if the person has a reasonable excuse, for example, if he is disabled or injured and so unable to leave the premises. The persons listed in subsection (2) are:



- any person who works at the premises in a capacity that gives him the authority to make that request,
  - a premises licence holder or designated premises supervisor,
  - an officer or member of a club who is present at the time of the sale and who has authority to make that request, and
  - a premises user (see the definition in section 100(2)) who has given a temporary event notice in respect of those premises.
228. Subsection (4) provides that a police constable must help to expel drunk or disorderly individuals from relevant premises, or help to prevent them entering as the case may be, if requested to do so by anyone listed above. The section thus re-enacts the provisions of section 174 of the Licensing Act 1964 but unlike that section is not limited to premises with a licence for alcohol sales.

#### ***Section 144 – Keeping of smuggled goods***

229. This section provides that it is an offence knowingly to keep or allow to be kept, on relevant premises (see the definition in section 159), any unlawfully imported goods or goods on which duty has not been paid. Subsection (2) sets out the categories of person who may commit the offence. These are
- any person who works at the premises in a capacity that gives him the authority to prevent those goods from being kept on the premises,
  - a premises licence holder or designated premises supervisor,
  - an officer or member of a club who is present at the time when the goods are kept on the premises and who has authority to prevent them being so kept, and
  - a premises user (see the definition in section 100(2)) who has given a temporary event notice in respect of those premises.

Subsection (4) provides that a court which convicts a person of this offence may order the confiscation of the goods in question and their containers, which may then be either destroyed or dealt with as the court orders.

#### ***Section 145 – Unaccompanied children prohibited from certain premises.***

230. By virtue of this section it is an offence to admit children under 16 to certain categories of relevant premises (see section 159) if they are not accompanied by an adult and those premises are open for the supply of alcohol for consumption there. Those premises are
- a) those exclusively or primarily used for the supply of alcohol for consumption on the premises, or
  - b) those open for the purposes of being used for the supply of alcohol for consumption on the premises by virtue of Part 5 (permitted temporary activities) and, at the time the temporary event notice in question has effect, they are exclusively or primarily used for such supplies.

It will also be an offence to allow an unaccompanied child under 16 to be on relevant premises at a time between the hours of midnight and 5 a.m when the premises are open for the supply for alcohol for consumption there.

231. Subsection (3) sets out the categories of persons who may commit the offence. These are:
- any person who works at the premises in a capacity that gives him the authority to request the child to leave,

- a premises licence holder or designated premises supervisor,
  - an officer or member of a club who is present in a capacity which enables him to request the child to leave, and
  - a premises user (see the definition in section 100(2)) who has given a temporary event notice in respect of those premises.
232. Subsection (6) provides for a defence where a person charged with an offence under this section believed the child was aged 16 or over, or the adult accompanying them was aged 18 or over, and either took all reasonable steps to establish the individual's age or nobody could reasonably have suspect from the individual's appearance that they were aged under 16 or 18. There is a further defence where someone is charged with an offence under this section because of the act or default of another person, and the person charged exercised all due diligence to avoid committing the offence. No offence is committed if the unaccompanied child is merely passing through the premises, where this is the only convenient route.

### ***Section 146 – Sale of alcohol to children***

233. Existing legislation ties the offence of selling alcohol to children to licensed premises. This section makes it an offence to sell alcohol to children anywhere. Subsections (2) and (3) further provide that it is an offence for a club, or a person on behalf of a club, to supply alcohol to or to the order of a child who is a member of a club, or to any child on the order of a member of a club. Subsection (4) provides a defence if the seller believed that the purchaser was 18 or over and either he took all reasonable steps to establish the purchaser's age or nobody could reasonably have suspected from the purchaser's appearance that he was under 18. The second limb of that defence would cover a case where the purchaser who was under 18 looked exceptionally old for his age. The defendant will be deemed to have taken 'all reasonable steps' if he asked the individual for evidence of his age. However, if it is proved by the prosecution that the evidence of age was such that no reasonable person would have been convinced by it (for example if the proof of age was either an obvious forgery or clearly belonged to another person), the defence will fail. Subsection (6) provides a further defence in circumstances where the sale or supply was made by someone other than the person charged with the offence (for example, where the manager of a pub is charged with the offence although the actual sale was made by a barman) if the person charged exercised all due diligence to avoid committing the offence.

### ***Section 147 – Allowing sale of alcohol to children***

234. This section provides that it is an offence knowingly to allow the sale (or in, the case of clubs, the supply) of alcohol to a child, on relevant premises (see the definition in section 159). Subsections (2) and (4) set out the categories of person who may commit the offence. These include any person who works at the premises in a capacity that gives him the authority to prevent the sale (or supply), and, in the case of a supply by or on behalf of a club, an officer or member of the club who is present at the time of the supply in a capacity that gives him authority to prevent that supply.

### ***Section 148 – Sale of liqueur confectionery to children under 16***

235. This section makes it an offence to sell liqueur confectionery – as defined in section 191(2) – to a child under 16, or for a club or person on behalf of a club to supply it to or to the order of such a child. Subsection (3) provides a defence if the seller believed that the purchaser was 16 or over and if either he took all reasonable steps to establish the purchaser's age or if nobody could reasonably have suspected from the purchaser's appearance that he was under 16. The defendant will be deemed to have taken 'all reasonable steps' if he asked the individual for evidence of his age, and that evidence was such that it would have convinced a reasonable person. Subsection

(5) provides a further defence in circumstances where the sale or supply was made by someone other than the person charged with the offence, if the person charged exercised all due diligence to avoid committing the offence.

### ***Section 149 – Purchase of alcohol by or on behalf of children***

236. Subsection (1) makes it an offence for a child to buy or attempt to buy alcohol whether or not on licensed premises, or, if he is a member of a club, for him to have alcohol supplied to him by the club (in circumstances where he actively caused the supply) or attempt to do so. The offence will not be committed if the child was asked by a police constable or trading standards officer, acting in the course of their duty, to buy or attempt to buy alcohol in order to conduct test purchasing operations to establish whether licensees and staff working in licensed premises are complying with the prohibition on underage sales.
237. Subsection (3) makes it an offence for a person to act as an agent for a child in purchasing or attempting to purchase alcohol, for example, if a child gives money to an adult to buy alcohol in an off-licence for consumption by the child. The offence also applies where a member of a club has alcohol supplied to a child or attempts to do so. Subsection (4) makes it a further offence for a person to buy or attempt to buy alcohol for consumption by a child on licensed premises, for example, where a father buys a drink for his son in a pub. The offence also applies where a member of a club has alcohol supplied to a child (in circumstances where he actively caused the supply) or attempts to do so. Subsection (5) provides that this offence will not be committed if a person aged 18 or over buys beer, wine or cider for a person aged 16 or 17 to consume with a table meal on relevant premises (see the definitions in section 159), in circumstances where the 16 or 17 year old is accompanied by an adult. This provision thus re-enacts the existing exemption in section 169D of the Licensing Act 1964.

### ***Section 150 – Consumption of alcohol by children***

238. Subsection (1) makes it an offence for a child knowingly to consume alcohol on relevant premises (see the definition in section 159). The offence will thus not be committed if the child inadvertently consumes the alcohol, for example if his drink is spiked. Subsection (2) also makes it an offence knowingly to allow the consumption of alcohol by a child on relevant premises. Subsection (3) sets out the categories of person who may commit this offence. These include any person who works at the premises in a capacity that gives him the authority to prevent the consumption and, in the case of a supply by a club, to any officer or member of a club who is present at the time of the consumption in a capacity which allows him to prevent it. Subsection (4) provides that the offences in this section will not be committed where a 16 or 17-year-old consumes beer, wine or cider with a table meal (see the definition in section 159) in circumstances where he is accompanied by an adult.

### ***Section 151 – Delivering alcohol to children***

239. This section sets out offences relating to the delivery of alcohol to children. Subsection (1) provides that it is an offence for someone working on relevant premises (see the definition in section 159) knowingly to deliver to a child alcohol which is sold on the premises or supplied there by or on behalf of a club. The offence would cover, for example, circumstances where a child takes delivery of a consignment of alcohol bought by his father from an off-licence (in a case where the exceptions mentioned below do not apply). Subsections (2) and (3) provide that it is also an offence for a person working on relevant premises and in a position which gives him authority to prevent it knowingly to allow another person to deliver alcohol to children. This offence would cover, for example, a person who authorises a delivery of the sort mentioned above. Subsections (4) and (5) provide that this offence will also apply in the case of a delivery by or on behalf of a club or to or to the order of a member of the club, where the delivery is

allowed by a person working on the premises in a capacity which gives him authority to prevent it.

240. Subsection (6) provides that the offences in this section are not committed if the alcohol is delivered to the home or place of work of the purchaser or person who is supplied (for example, where a child answers the door and signs for the delivery of his father's order at his house), nor where the job of the minor who took delivery of the alcohol involves delivery of alcohol (for example, where a 16 year old office worker is sent to collect a delivery for his employer), nor where the alcohol is sold or supplied for consumption on the relevant premises.

### ***Section 152 – Sending a child to obtain alcohol***

241. This section re-enacts the existing offence (in section 169G of the Licensing Act 1964) of knowingly sending a child to obtain alcohol which is sold for consumption off the premises, or which is supplied by or on behalf of a club to or to the order of a member of the club for such consumption. This offence would cover, for example, circumstances where a parent sends their child to an off-licence to collect some alcohol which had been bought over the telephone. Subsection (2) provides that the offence will be committed regardless of whether the child is sent to the actual premises from where the alcohol is sold or supplied, or whether he is sent to other premises to which the alcohol has been sent. Subsection (3) provides that the offence will not be committed where the minor's works at the premises in question and his job involves taking deliveries of alcohol. Subsection (4) provides that the offence will also not be committed if the child is sent by a police or trading standards officer, in the course of his duty, to obtain alcohol to test the compliance of the retailer with the prohibition on underage sales.

### ***Section 153 – Prohibition of unsupervised sales by children***

242. This section re-enacts provisions in the Licensing Act 1964 so that it is an offence knowingly to allow an individual under the age of 18 to sell or, in the case of a club, to supply alcohol unless each such sale or supply has been specifically approved. Subsection (4) sets out the categories of person who may commit this offence. These are
- a premises licence holder, designated premises supervisor or someone over 18 authorised by them, or
  - in the case of a club, any member of officer of the club who is present on the premises in a capacity that enables him to prevent the supply, or
  - in a case where the premises are used for a temporary permitted activity, the premises user or a person over 18 authorised by him.

Subsection (2) provides that the offence in this section is not committed where the alcohol is sold for consumption with a table meal in a part of the premises used only for this purpose. The effect of this exception is that, for example, a minor will be able to serve alcohol in a restaurant.

### ***Section 154 – Enforcement role for weights and measures authorities***

243. This provision re-enacts section 169I of the Licensing Act 1964 which confers on weights and measures authorities the role of conducting test purchase operations to check retailers' compliance with the prohibition on underage sales. In practice, these activities are usually carried out by trading standards officers. Subsection (2) provides that a weights and measures inspector may either make purchases himself or may authorise another person to do so. Thus, for example, he might lawfully ask a child to attempt to purchase alcohol.

### ***Section 155 – Confiscation of sealed containers for alcohol***

244. This section amends the Criminal Justice and Police Act 2001 and the Confiscation of Alcohol (Young Persons) Act 1997 so that the police have the power to confiscate alcohol in sealed containers from anyone in an area which has been designated by the local authority for the purposes of curbing anti-social behaviour and from people under 18 in any public place. Police powers in relation to confiscation of alcohol currently apply only in relation to opened containers.

### ***Section 156 – Prohibition of sale of alcohol on moving vehicles***

245. This section makes it an offence to sell alcohol by retail on or from any vehicle which is not permanently or temporarily parked. Subsection (3) provides a defence in circumstances where:
- the sale was mistaken, was due to the seller relying on information given to him, was the fault of another person or was due to some cause beyond his control, and
  - he took all reasonable precautions and exercised all due diligence to avoid committing the offence.
  - For example, a person might mistakenly believe the beverages he is serving are non-alcoholic.

### ***Section 157 – Power to prohibit sale of alcohol on trains***

246. Subsections (1) and (2) provide for the prohibition of sales of alcohol at specified stations or on trains travelling between specified stations for a specified period. A prohibition order may be made by local magistrates on the application of a police officer of at least the rank of inspector, if the magistrates are satisfied that the order is necessary for the prevention of disorder. Subsection (4) requires the police officer who applied for the order (or another police officer who has been designated by the chief officer of police) to serve a copy of the order on the train operator or operators concerned. It is to be an offence knowingly to sell alcohol, or to permit its sale, in contravention of such an order.

### ***Section 158 – False statements made for the purposes of this Act***

247. This section provides that it is an offence for a person knowingly or recklessly to make any false statement in connection with applications and notices under the Act.

## **Part 8: Closure of premises**

### **General**

248. **Part 8** of the Act contains provisions empowering the courts and the police to make temporary closure orders in respect of certain premises.
249. It re-enacts with some modifications the provisions to be found in sections 179A to 179K and 188 of the Licensing Act 1964. In particular the provisions of the Act are not restricted to premises licensed for the sale of alcohol, but extend to all relevant premises (see section 161(8)).

### ***Section 160 – Order to close premises in an area experiencing disorder***

250. This section sets out the power to close all premises with a premises licence, or in respect of which a temporary event notice has effect, which are located in a particular geographical area for a period not exceeding 24 hours. The power is exercisable by a magistrates' court on application from a police officer of the rank of superintendent or above. It is exercisable only where the court thinks such an order is necessary to prevent disorder. It is an offence to keep open premises that are the subject of a closure



order. Section 171(2) and (3) make provision about when premises are “open” for these purposes.

### ***Section 161 – Closure order for identified premises***

251. This section provides a senior police officer with the power to close specific premises for up to 24 hours. A closure order may be made upon two grounds, the first of which is where there is actual or likely disorder to the extent that the closure of the related premises is necessary in the interests of public safety. The second ground is where closure is necessary to prevent a public nuisance, owing to the noise emanating from the premises.
252. In deciding whether to make a closure order, the police officer must have regard to the conduct of certain defined individuals at the premises. The purpose of this provision is to allow discretion in cases where, for example, it is clear that those managing the premises are treating the disorder or disturbance with sufficient gravity and are taking steps to reduce it or bring it under control.

### ***Section 162 – Extension of closure order***

253. This section empowers a senior police officer to extend, in certain limited circumstances, the period for which a closure order may have effect. Such an extension may be for a further period of 24 hours. More than one extension may be made.

### ***Section 163 – Cancellation of closure order***

254. This section empowers a senior police officer to cancel a closure order at any time before it has been considered by a magistrates’ court pursuant to the latter’s power in section 165. Such a cancellation must be made where the officer does not reasonably believe that closure of the premises is necessary because of disorder, likely disorder or because of noise emanating from the premises. The officer must give notice to the licence holder, designated premises supervisor, premises user or manager of the premises where it is decided to cancel a closure order.

### ***Section 164 – Application to magistrates’ court by police***

255. After a closure order comes into force, the responsible senior police officer must apply to the magistrates’ court as soon as possible to allow for the consideration of the order by the court. Notice of such an application and details of the order itself must also be given to the relevant licensing authority (as defined in section 171).

### ***Section 165 – Consideration of closure order by magistrates’ court***

256. The relevant magistrates’ court to whom an application has been made under section 164 must hold a hearing. The court can take a number of courses of action in relation to the order, including revoking the closure order, or ordering its extension until the licensing authority has conducted a review of the order under section 167. The court may also make an order determining that the premises should be, or should remain, closed until such a review has been completed.

### ***Section 166 – Appeal from decision of magistrates’ court***

257. This section provides a right of appeal to the Crown Court against decisions made by a magistrates’ court under section 165.

### ***Section 167 – Review of premises licence following closure order***

258. Where a licensing authority has received notice from a magistrates’ court pursuant to section 165 (consideration of closure order by magistrates’ court), in respect of a closure

order for identified premises having effect in relation to premises, it must review any premises licence having effect in respect of those premises.

259. The licensing authority may take steps to further the licensing objectives including revocation of the licence, modification of the licence conditions, the exclusion of certain licensable activities or the removal of the designated premises supervisor. For example, where the licensing authority determines that the lack of experience or expertise of the designated premises supervisor has contributed to the level of disorder that has given rise to a closure order, it may specify that the individual concerned should be removed from that position. Similarly, it may determine that imposing a condition on the licence to the effect that additional security staff should be employed would reduce disorder.

### ***Section 168 – Provision about decisions under section 167***

260. This section makes provision for premises subject to a closure order under section 161 (closure orders of identified premises) to remain closed during any appeal against the licensing authority's decision to revoke the premises licence (although the licence would remain in force). Under Schedule 5 a magistrates' court may order the re-opening of the premises pending the appeal.

### ***Section 171 – Interpretation of Part 8***

261. This section sets out various definitions for the purposes of this Part. The section explains in what circumstances premises will be treated as "open" and states that certain activities will not count for the purposes of determining whether premises are "open". These are –
- in a case where the premises do not have a premises licence, but have a temporary event notice, any activities (other than licensable activities) taking place outside the event period in the notice
  - any use for qualifying club activities under a club premises certificate
  - any supplies of hot food and drink which are not licensable activities by reason of their being supplied to members of a club or the guests of members

## **Part 9: Miscellaneous and Supplementary**

### **General**

262. This Part of the Act covers a number of miscellaneous issues.

### ***Section 172 – Relaxation of opening hours for special occasions***

263. The Secretary of State may make an order to provide for premises with a premises licence or club premises certificate to open for specified, generally extended, hours on special occasions – for example, Royal Jubilees.

### ***Section 173 – Activities in certain locations not licensable***

264. This section provides that activities which would otherwise be "licensable activities" for the purposes of the Act are not such activities if carried on in certain places (e.g. aboard a vessel on an international journey).
265. The "examination station" of a designated airport (as mentioned in subsection (1)) is essentially that part of the airport beyond the security check-in.

### ***Section 174 – Certifying premises on grounds of national security***

266. Ministers of Cabinet rank, or the Attorney General, may grant a certificate in respect of any premises on the grounds of national security. The effect of the certificate is that

activities carried on at the premises are not “licensable activities” for the purposes of the Act (see section 173(1)(g)). This power may be used in circumstances where the inspection of a particular premises, for purposes of the licensing regime, would give rise to a security risk.

***Section 175 – Exemption for raffle, tombola etc.***

267. The giving of a sealed container of alcohol as a prize in a lottery will not be counted as a licensable activity for the purposes of the Act if:
- the lottery is promoted as incidental to a bazaar, sale of work, fete, dinner, dance, sporting or athletic events or other entertainment of a similar character
  - after the deduction of all relevant expenses, none of the proceeds are used for private gain
  - none of the prizes are money prizes
  - the tickets or chances are sold or issued and the result of the draw is announced at the time of, and in the same place as, the entertainment
  - the lottery or draw is not the main inducement to attend the entertainment
268. Subsection (3) defines the expenses which are ‘relevant’ for the purposes of this section as those incurred in the course of arranging and holding the entertainment, and those in connection with the lottery or draw, including the printing of tickets and buying prizes.

***Section 176 – Prohibition of alcohol sales at service areas, garages etc.***

269. This section provides for a general prohibition on the sale of alcohol at motorway service areas and garage forecourts. The Secretary of State may by order exclude or include any descriptions of premises from the set of those to which the prohibition applies. An example of the possible use of this power would be to lift the prohibition from garages, perhaps in rural areas, where the turnover is made up of a specified proportion of non-petrol sales. But the power is not limited to premises related to motorway service areas and garages.

***Section 177 – Dancing and live music in certain small premises***

270. This section provides that where
- a premises licence or club premises certificate authorises the sale of alcohol for consumption on the premises and the provision of “music entertainment” (live music or dancing),
  - the relevant premises are used primarily for the consumption of alcohol on the premises, and
  - the premises have a capacity limit of up to 200
- any conditions relating to the provision of the music entertainment imposed on the licence by the licensing authority, other than those set out by the licence or certificate holder in his operating schedule, will be suspended except where they were imposed as being necessary for public safety or the prevention of crime and disorder.
271. In addition, where
- a premises licence or club premises certificate authorises the provision of music entertainment, and
  - the premises have a capacity limit of 200
- then, during the hours of 8am and midnight, if the premises are being used for the provision of live unamplified music but no other description of regulated entertainment

any conditions imposed on the licence by the licence authority, again other than those set out in the operating schedule, which relate to the provision of the music entertainment will be suspended.

272. This section can be disapplied in relation to any condition of a premises licence or club premises certificate following a review of the licence or certificate.

### ***Section 178 – Right of freeholder etc to be notified of licensing matters***

273. This section provides that a person with a property interest in any premises situated in the licensing authority's area may give notice of his interest to that authority in a prescribed form and on payment of a fee to be prescribed by the Secretary of State. Those who may take advantage of this arrangement include the freeholder or leaseholder, a legal mortgagee in respect of the premises, a person in occupation of the premises or any other person prescribed by the Secretary of State. The notice will have effect for 12 months but a new notice can be given every year. Whilst their notice has effect, the person or business involved will, if any change relating to the premises concerned has been made to the licensing register which the licensing authority has a duty to keep under section 8, be notified of the matter to which the change relates.. They will also be notified of their right under section 8 to request a copy of the information contained in any entry in the register .

### ***Section 179 – Rights of entry to investigate licensable activities***

274. This section provides for police officers or other authorised persons to enter premises to ensure that any licensable activities are being carried on under the appropriate authorisations. It is already an offence under the Police Act 1996 to obstruct a constable in the exercise of his duty. It will be an offence under the Act to obstruct other authorised persons in exercising this power.

### ***Section 180 - Right of entry to investigate offences***

275. This section provides that police officers may enter and search premises where there is reason to believe an offence under the Act has been, is being or is about to be committed, and may use reasonable force to gain entry. It will be an offence intentionally to prevent the exercise of these powers.

### ***Section 181 – Appeals against decisions of licensing authorities***

276. Applicants for and holders of licences and club premises certificates, applicants for provisional notices and interim authority notices and applicants for temporary event notices, responsible authorities and interested parties all have rights of appeal to a magistrates' court against decisions of a licensing authority. The appeals mechanism is set out at Schedule 5. This section sets out the powers of the magistrates in determining such appeals.

### ***Section 182- Guidance***

277. The Act provides that licensing authorities must have regard to guidance issued by the Secretary of State in formulating their framework policy documents and in discharging their other functions under the Act. This section provides for the issue and revision of this guidance and its publication and requires the Secretary of State in the case of the initial guidance to issue it only after it has been approved in draft form by resolution of each House of Parliament. Revisions of the guidance come into force when laid before Parliament. However, they can be prayed against within 40 days and if disapproved a further revision would have to be laid under the same procedure. In the meantime the revised guidance retains full force and effect pending the laying of the further revision.

### ***Section 183 - Hearings***

278. Procedures for hearings will be prescribed in regulations, which may require authorities to notify certain persons of hearings, ensure the expedition of urgent cases and set out rules relating to evidence and legal representation and the period within which steps must be taken. Licensing authorities may not make any orders as to the costs of hearings under the Act.

### ***Section 184 – Giving of notices, etc.***

279. This section sets out rules for delivery of documents to the licensing authority and any other person or body affected by the licensing regime.

### ***Section 185 – Provision of information***

280. This section provides for the sharing of information by licensing authorities and responsible authorities for the purposes of the Act.

### ***Section 186 - Proceedings for offences***

281. This section sets out the bodies that can bring a prosecution for an offence contained in the Act. It also extends the limitation period for bringing summary proceedings from the usual period of six months to a period of 12 months.

### ***Section 187 – Offences by bodies corporate etc.***

282. This section provides that where an offence under the Act is committed with the consent or connivance of a director, member of the management committee, chief executive, manager, secretary or similar officer of a corporate body (e.g. a limited company), or through attributable neglect, the officer as well as the corporate body commits the offence. In the case of partnerships, the consent, connivance or attributable neglect of a partner, or in the case of other unincorporated associations the consent or connivance of an officer of the association or member of its governing body, would make the individual and the organisation guilty of the offence.

### ***Section 188 – Jurisdiction and procedure in respect of offences***

283. This section provides that any fine imposed following the conviction of an unincorporated association should be paid out of the association's funds. It provides that any proceedings brought against unincorporated associations must be brought in the name of the association, and not the name of any of its members. Certain legal procedures and rules relating to the service of documents will apply to unincorporated associations as to bodies corporate.

### ***Section 189 - Vessels, vehicles and moveable structures***

284. The provisions for premises licences, club certificates and temporary permissions will apply to a vessel not permanently moored or berthed in a particular place as though they were premises situated at the place where it is normally moored or berthed. A vehicle or moveable structure – e.g. tent or inflatable building – which is not permanently located in the same place will be treated as premises located at any place where it is parked or set. So if licensable activities are carried on or from the vehicle when it is parked, a premises licence, club premises certificate or temporary event notice will be required, and where such activities take place when it is parked in more than one place, the vehicle will be treated as if it were separate premises at each location, and separate premises licence etc. will be required. Sections 29 to 31 (provisional statements re premises licences) do not apply to vessels, vehicles or moveable structures.



### ***Section 190 - Location of sales***

285. Where the place where a sale of alcohol takes place is different from the place from which the alcohol is supplied, the sale is treated as having happened at the place from which the alcohol is appropriated to the contract. For example, when alcohol is bought via mail order or a telephone call centre, the sale will, for the purposes of the Act, have taken place at the warehouse from which the alcohol would be delivered, and not the call centre. The requirement for a premises licence will therefore apply to the warehouse rather than the call centre.

### ***Section 191 – Meaning of “alcohol”***

286. For the purpose of the Act, ‘alcohol’ means: spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor. It does **not** include any liquor of 0.5% strength or below at the time of the sale or supply in question, perfume, flavouring essence, alcohol which is, or is included in, any medicine, denatured alcohol (methylated spirits) or alcohol contained in liqueur confectionery (as defined in subsection (2)).

### ***Section 192– Meaning of ‘sale by retail’***

287. This section defines ‘sale by retail’, of alcohol, for the purposes of the Act as a sale to a person other than a sale to a trader for trade purposes, to a club which holds a club premises certificate, to a premises licence holder or to a premises user with a temporary event notice for purposes permitted by those certificates, licences or notices. The purpose of these exemptions is to ensure that purely “business to business” sales are excluded from the scope of the Act.

### ***Section 195 – Crown application***

288. This section provides for the Act to apply to the Crown and to Crown property. It also applies to land of the Duchies of Lancaster and Cornwall (except to the extent that they are occupied by the Queen or the Prince of Wales).
289. The Board of the Green Cloth is a committee of the Royal Household responsible for licensing inns "within the verge of the Palace" (i.e. Buckingham Palace). There are a number of public houses within the jurisdiction of the Board, which is limited to what used to be the private grounds of the Sovereign, and includes Carlton House Terrace, the northern end of Whitehall and the National Gallery (the former Royal Stables). Those areas currently within the jurisdiction of the Board of Green Cloth are within the remit of the Act, so that licensing functions in respect of these areas are to be carried out by the relevant licensing authority.
290. Activities carried out at royal palaces are not “licensable activities” for the purposes of the Act (see section 173). This would include, for example, the Palace of Westminster.

### ***Section 196 – Removal of privileges and exemptions***

291. Under the Licensing Act 1964, the historical exemptions and privileges enjoyed by the University of Cambridge and the Honourable Company of Vintners were preserved and so the licensing requirements did not apply to either of them. The new regime applies across the board and this section makes it clear that none of those privileges or exemptions are being preserved.

### ***Section 197 - Regulations and orders***

292. Most secondary legislation made under the Act is to be subject to the negative resolution procedure. But the following secondary legislation is to be subject to the affirmative procedure:
- a) an order under section 100(8) (alteration of maximum temporary event period etc.)

- b) an order under section 107(12) (alteration on limit on number of temporary event notices)
  - c) an order under section 172 (relaxation of opening hours for special occasions);
  - d) an order under section 176(3) (order amending definition of “excluded premises” where alcohol sales are prohibited);
  - e) order under paragraph 4 of Schedule 1 (amendments to the meaning of “regulated entertainment”).
293. Commencement orders and the order prescribing the start of the first period for which licensing authorities must prepare a statement of licensing policy (see section 5) will be subject to neither procedure. Regulations or an order under the Act may make transitional provisions.

### ***Section 198 – Minor and consequential amendments***

294. This section gives effect to Schedule 6, which sets out minor and consequential amendments to existing legislation required by the Act. The Secretary of State has a limited power to make consequential amendments by order. He may only make amendments, consequential on any provision of the Act, to any Act or subordinate legislation made before the provision in question comes into force.

### ***Section 199 – Repeals***

295. This section gives effect to Schedule 7, which sets out the existing legislation repealed by the Act, and the extent of any repeal.

### ***Section 200 – Transitional provisions etc.***

296. This section gives effect to Schedule 8, which sets out the transitional and transitory provisions.

### ***Section 201 – Short title, commencement and extent***

297. The Act extends to England and Wales. And the amendment of the Confiscation of Alcohol (Young Persons) Act 1997 (see section 155) extends also to Northern Ireland.

### ***Schedule 1 – Provision of regulated entertainment***

298. This Schedule defines the provision of regulated entertainment as covering entertainment provided solely or partly for members of the public, or exclusively to club members and their guests, or for which a charge is made, which is provided for profit (which will include to raise money for charity). It also covers the provision of entertainment facilities for participating in entertainment.
299. The definition would cover entertainment staged by a charity for purposes of fundraising, but would not, for example, include the provision of entertainment for a company or firm for its clients, for which no charge was made but which was connected with stimulating general goodwill which might be advantageous for the business.
300. Forms of entertainment to be regulated by the Act include:
- a) **plays** – both performance and rehearsal;
  - b) **the showing of films** (or any exhibition of moving pictures);
  - c) **all indoor sporting events**. For the purposes of the Act, an indoor sporting event is one which takes place inside a building for spectators wholly inside that building. A sporting event that takes place at a venue whose roof can be opened or closed would not constitute an indoor event, even when the roof is closed. For

the purposes of this Act, sport is defined as any contest in which physical skill is the main factor and any form of physical recreation engaged in for the purposes of competition or display. For example, tennis would be covered by the definition. However, a game of chess contested publicly would not;

- d) **outdoor boxing and wrestling matches.** No other form of outdoor sport would be regulated by the Act;
- e) **music:** both the performance of live music and the playing of recorded music. No distinction is made in the Act between different musical styles; and
- f) performance of **dance**;

where the entertainment takes place in the presence of an audience and is provided for their entertainment.

- 301. The Secretary of State may by order (subject to the affirmative resolution procedure) amend the definitions included in the Schedule.
- 302. A number of exemptions to regulated entertainment are included in the Act including:-
  - a) the showing to an audience of television and radio programmes forming part of a programme service within the meaning of the Broadcasting Act 1990 (so long as the programmes have not been pre-recorded)
  - b) music which is incidental to an activity which is not itself the provision of regulated entertainment, for example, music played in lifts or piano music played in the background in a restaurant.
  - c) film exhibitions used for product demonstration, advertisement, information, education or instruction. This would exempt, for example, educational films shown in schools, or special advertisements shown at product display stands in shopping centres.
  - d) the provision of entertainment or entertainment facilities for the purposes of, or incidental to, a religious meeting or service or provided at a place of public religious worship. This would exempt, not only the singing of hymns or other religious material at a religious service, but also the performance of a classical concert at a church.
  - e) entertainment at a garden fete.
  - f) morris dancing, or dancing of a similar nature.
  - g) entertainment provided on vehicles in motion.

### ***Schedule 2 – Provision of late night refreshment***

- 303. For the purposes of the Act, late night refreshment means the supply of hot food or hot drink to the public, for consumption on or off the premises, between 11pm and 5am. It also means the supply of hot food or hot drink between those hours on premises to which the public has access. The Schedule contains a definition of “hot” for the purposes of the Act.
- 304. Certain supplies are not covered by the definition of late night refreshment, including:
  - a) supply to guests of hotels or similar premises, e.g. guest houses, lodging houses, caravan or camping sites or other premises supplying accommodation as their main purpose
  - b) supply to members of recognised clubs

- c) supply to employees of a particular employer – for example, where refreshment is made available to employees whose shift patterns require them to be present at the workplace between 11pm and 5am
- d) premises already licensed under certain other Acts – for instance those used as “near beer” premises in London (where certain descriptions of non-alcoholic beverages are sold).

There are specific exemptions for the provision of hot food or drink by vending machines (where the money is inserted by members of the public rather than the staff at the premises), food or drink supplied free of charge, or by a registered charity.

### ***Schedule 3 – Matters to be entered in licensing register***

305. This Schedule sets out the information to be recorded in the licensing register that all licensing authorities will be obliged to maintain (see section 8).

### ***Schedule 4 – Personal licence: relevant offences***

306. This Schedule lists those offences that could, on conviction, rule out the grant or renewal of a personal licence to the individual convicted, or lead to revocation of an existing licence held by a licence holder so convicted.

### ***Schedule 5 – Appeals***

307. This Schedule provides for decisions made by a licensing authority to be subject to appeal to a magistrates’ court by any party involved in the decision – applicants, responsible authorities and interested parties. So, an applicant for a premises licence may appeal to the magistrates’ court against the inclusion in the licence by the licensing authority of conditions that the applicant sees as unreasonably restrictive. At the same time, the police, for example, or a local resident would have a right of appeal against conditions that appeared to them to fail to promote the licensing objectives.
308. **Part 1** of this Schedule sets out the appeals process with regard to premises licences.
- Applicants may appeal to the magistrates court if the licensing authority has rejected their application for a premises licence, for a variation of a premises licence, for the variation of a designated premises supervisor or for a transfer of a licence.
  - If a licence is granted, the licence holder may appeal against the imposition of conditions on that licence, the exclusion of a licensable activity or refusal to specify an individual as supervisor.
  - Those who made relevant representations during the course of an application may appeal against the decision to grant a licence.
  - Applicants or any person who made a relevant representations may appeal against the decision to issue a provisional statement.
  - Where a licensing authority takes the step of modifying the conditions of the licence before granting a variation, the applicant may appeal. Any person who made relevant representations can appeal against the decision to vary the licence.
  - The chief officer of police who gave a notice may appeal against the grant of an application to specify an individual as a premises supervisor or against the decision to transfer a licence.
  - Where a licensing authority decides to cancel an interim authority notice following a notice from the chief officer of police, the person who gave the interim authority notice may appeal against the decision. Where the licensing authority does not

cancel the interim authority notice following a notice from the police, the chief officer of police may appeal.

- The decision in relation to a review of a premises licence may be brought to appeal by the applicant for the review; the premises licence holder or any one who made relevant representations.

309. **Part 2** sets out the appeals procedure in relation to club premises certificates.

- Clubs applying for a premises certificate or applying to vary a certificate may appeal against the decision by the licensing authority to reject the application.
- If a certificate is granted, the holding club may appeal against the imposition of conditions or the exclusion of a licensable activity.
- Those who made relevant representations during the course of an application may appeal against the decision to grant a certificate.
- Where a licensing authority takes the step of modifying the certificate before granting a variation, the club may appeal. Any person who made relevant representations can appeal against the decision to vary the certificate.
- The decision in relation to a review of a club premises certificate may be brought to appeal by the applicant for the review, the certificate-holding club or anyone who made relevant representations.

310. **Part 3** of this Schedule covers appeals in relation to temporary event notices, personal licences and closure orders.

- In relation to temporary event notices, premises users may appeal against the decision by a licensing authority to give a counter notice.
- Applicants for personal licences may appeal against the decision to reject an application for or application to renew a licence. Where the police lodged an objection notice to the grant or renewal of a personal licensing, and the licensing authority grants or renews the licence, the police may appeal.
- Personal licence holders may appeal against revocation of that licence by the licensing authority. Where the police have given notice about relevant offences which come to light after the granting or renewal of a licence, and the licensing authority decide not to revoke the licence, the police may appeal against the decision.
- The licence holder or any person who made representations on a review of a premises licence following a closure order may appeal against the outcome of the review.

### ***Schedule 6 – Minor and consequential amendments***

311. This Schedule sets out the amendments to existing legislation required by the Act.

### ***Schedule 7- Repeals***

312. This Schedule sets out the existing legislation which will be repealed by the Act.

### ***Schedule 8 – Transitional provision etc.***

313. **Part 1** of this Schedule sets out the transitional provisions for premises licences. A person who is either the holder of an existing licence or who has the consent of the holder of an existing licence may, within 6 months of a day appointed for the purposes of this Part of the Schedule, apply to the relevant licensing authority (determined in accordance with section 12 in Part 3 of the Act) for the conversion of an existing licence, or existing licences, to a premises licence. The Part lists, in paragraph 1(1), the existing



licences in the current licensing regimes which may be converted to a premises licence and defines existing licensable activities to mean licensable activities authorised under an existing licence and any other licensable activities which may be carried on at the premises to which the existing licence relates which may be carried on by virtue of the existence of the licence.

314. Paragraph 2(4) and (5) details the matters to be specified in an application for the conversion of an existing licence and the documents to accompany the application. Paragraph 3 requires an applicant for the conversion of an existing licence to give a copy of his application (with its accompanying documents) to the chief officer of police for the police area in which the premises are situated within 48 hours of the application. In circumstances where an appeal is pending against a decision to revoke or reject an application for the renewal of an existing licence and the chief officer of police is satisfied that the conversion of the existing licence would undermine the crime prevention objective or where he is satisfied that there has been a material change in circumstances since the grant of the existing licence or its last renewal such that the conversion of the existing licence would undermine the crime prevention objective, he must give a notice to that effect to both the applicant and the licensing authority. Paragraph 3(5) provides that the chief officer of police may not give such a notice after the end of the period of 28 days beginning with the day on which he received a copy of the application.
315. By virtue of paragraph 4, a licensing authority must grant the application for conversion of an existing licence unless a notice has been given by the chief officer of police under paragraph 3 which has not been withdrawn. If a notice has been given, the authority must hold a hearing to consider that notice (unless the applicant, the chief officer of police and the licensing authority agree that this is unnecessary) and reject the application (or that part of the application which relates to the existing licence to which the notice relates) if the authority considers that it is necessary to do so for the promotion of the crime prevention objective. If the licensing authority fails to determine the application within 2 months of the receipt of the application, the application will be treated as granted. However, an application will not be granted in circumstances where the existing licence has ceased to be held by the applicant before the application is granted. Paragraph 6 provides that where a new premises licence is granted the mandatory conditions for such licences will apply.
316. Paragraph 7 provides that a person who makes an application for the conversion of an existing licence may at the same time apply for a variation of the new premises licence (the converted licence), notwithstanding the fact that at that time it would not have been granted, as if that licence is in force under section 37 (application to vary licence to specify individual as premises supervisor) or section 34 (application to vary premises licence). If such an application is made the relevant licensing authority (see section 12) may discharge its functions in relation to that application and the relevant provisions in Part 3 of the Act will apply.
317. This Part of the Schedule also makes provision for the consequences of an existing licence being revoked by the licensing justices or a court after the grant of the new premises licence but before the second day appointed by the Secretary of State. If this occurs in respect of all the existing licensable activities converted to the new premises licence, the new premises licence will lapse. If it occurs in respect of only some of the said existing licensable activities the licensing authority is obliged to amend the new premises licence to remove those activity or activities from it.
318. Provision is made for the applicant to appeal against a decision by the licensing authority to reject the application for conversion of an existing licence and for the chief officer of police to appeal against a decision to grant the application after consideration of his notice of objection. Further, a right of appeal is provided for the “applicant” against a decision to amend the new licence (as mentioned in the paragraph above).

*These notes refer to the Licensing Act 2003 (c.17)  
which received Royal Assent on 10 July 2003*

319. These provisions enable existing licence holders, or applicants with their consent, to enjoy the same authorisation in the new system as they currently enjoy if they wish to do so.
320. Provision is made in relation to false statements for the purposes of obtaining a new licence.
321. [Paragraph 11](#) applies where, rather than using the procedure set out in the earlier paragraphs, a person who currently carries on a licensable activity applies for a new premises licence under Part 3 of the Act. A licensing authority is prohibited from attaching conditions to the premises licence which would have the effect of restricting the opening hours to more limited hours than the current “permitted hours” under Part 3 of the Licensing Authority Act 1964.
322. [Part 2](#) of this Schedule makes similar transitional provisions to those in Part 1 in relation to applications by clubs which are registered for the purposes of Part 2 of the Licensing Act 1964 to convert their existing club certificate under that Part to a club premises certificate.
323. [Part 3](#) of this Schedule sets out the transitional provisions for personal licences. During the transitional period (defined as the period of not less than six months specified by order), a holder of an existing justices’ licence (granted under the Licensing Act 1964) authorising the sale of alcohol by retail will be entitled to apply for the grant to him of a personal licence without having to possess the licensing qualification ordinarily required under Part 6 of the Act, provided that certain requirements are met. These are that he produces his current justices’ licence, his photograph (in a prescribed form) and a statement (if appropriate) relating to his convictions for relevant offences or foreign offences.
324. The applicant must give a copy of the application for a personal licence to the chief officer of police within 48 hours of making the application. The chief officer of police may give an objection notice if he is satisfied, having regard to the applicant’s conviction for any relevant offence or foreign offence, that the exceptional circumstances of the case are such that the grant of the licence would undermine the crime prevention objective. If no objection has been made by the police and the licensing authority is satisfied that the applicant holds a justices’ licence the application must be granted. If the authority is not satisfied that the applicant holds a licence it must reject the application. If the police have objected to the grant, the licensing authority must hold a hearing (unless the applicant, police and the authority agree otherwise) to consider the objection. As a result of the consideration of the objection notice the licensing authority must reject the application if it considers it necessary for the promotion of the crime prevention objective to do so or grant the application in any other case. Provisions in Part 6 of the Act relating to the notification of determinations by the licensing authority apply in relation to the authority’s decision (see section 122). Rights of appeal are conferred on the applicant and the chief officer of police.
325. If an authority fails to determine an application for a personal licence within 3 months of its receipt, the application will be treated as granted.
326. [Part 4](#) of this Schedule provides that during the transitional period licensing authorities should consult representatives of existing justices’ licences and registered clubs in their area in forming their licensing policy.
327. [Section 191](#) (meaning of “alcohol”) excludes “denatured alcohol”. This is the term which, from the commencement of section 5(1) of the Finance Act 1995 is to be used to refer to what is currently referred to as “methylated spirits”. Pending the commencement of that provision, section 191 has effect by virtue of paragraph 30 of this Schedule as if it referred to “methylated spirits”.
328. The Schedule also makes provision for savings in relation to some of the provisions which are repealed by the Act. To the extent that the provisions repealed are relied

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upon in other statutes (in particular, local enactments relating to London) their effect is preserved.