



Licensing (Scotland) Act 2005

2005 asp 16

PART 3

PREMISES LICENCES

Introductory

17 Premises licence

In this Act, “premises licence”, in relation to any premises, means a licence issued by a Licensing Board under section 26(1) or 47(2) authorising the sale of alcohol on the premises.

18 Meaning of “appropriate Licensing Board”

- (1) In this Part, “the appropriate Licensing Board” means, in relation to any premises or premises licence issued in respect of any premises—
 - (a) the Licensing Board in whose area the premises are situated, or
 - (b) where the premises are situated in the area of more than one Licensing Board—
 - (i) the Board in whose area the greater or greatest part of the premises is situated, or
 - (ii) if neither or none of those Boards falls within sub-paragraph (i), such of the Boards as is nominated in accordance with subsection (2).
- (2) In a case falling within subsection (1)(b)(ii), the applicant for a premises licence in respect of the premises must nominate one of the Licensing Boards to be the Licensing Board for the purposes of the application of this Part in relation to the premises.

19 Premises manager

- (1) In this Act, “premises manager”, in relation to any licensed premises in respect of which a premises licence has effect, means the individual for the time being specified as such in the premises licence.

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- (2) An individual may not, at any one time, be the premises manager of more than one licensed premises; and, accordingly, if an individual who is the premises manager of licensed premises is subsequently specified in the premises licence of other licensed premises as the premises manager of those other premises, the subsequent specification is of no effect.

Premises licence applications

20 Application for premises licence

- (1) Any person, other than an individual under the age of 18, may apply to the appropriate Licensing Board for a premises licence in respect of any premises.
- (2) An application under subsection (1) must—
- (a) contain a description of the subject premises, and
 - (b) be accompanied by—
 - (i) an operating plan for the subject premises,
 - (ii) a plan (referred to in this Act as a “layout plan”), in the prescribed form, of the subject premises, and
 - (iii) the certificates required by section 50(1).
- (3) An application under subsection (1) which complies with subsection (2) is referred to in this Act as a “premises licence application”.
- (4) An “operating plan” in relation to any premises is a document in the prescribed form containing—
- (a) a description of the activities to be carried on in the premises,
 - (b) a statement of the times during which it is proposed that alcohol be sold on the premises,
 - (c) a statement as to whether the alcohol is to be sold for consumption on the premises, off the premises or both,
 - (d) a statement of the times at which any other activities in addition to the sale of alcohol are to be carried on in the premises,
 - (e) where alcohol is to be sold for consumption on the premises, a statement as to whether children or young persons are to be allowed entry to the premises and, if they are to be allowed entry, a statement of the terms on which they are allowed entry including, in particular—
 - (i) the ages of children or young persons to be allowed entry,
 - (ii) the times at which they are to be allowed entry, and
 - (iii) the parts of the premises to which they are to be allowed entry,
 - (f) information as to the proposed capacity of the premises,
 - (g) prescribed information about the individual who is to be the premises manager, and
 - (h) such other information in relation to the premises and the activities to be carried on there as may be prescribed.
- (5) Where alcohol is to be sold both for consumption on and for consumption off any premises, the operating plan for the premises may, under subsection (4)(b), state different times for—
- (a) the sale of alcohol for consumption on the premises, and

- (b) the sale of alcohol for consumption off the premises.

21 Notification of application

- (1) Where a Licensing Board receives a premises licence application, the Board must give notice of the application to—
 - (a) each person having a notifiable interest in neighbouring land,
 - (b) any community council within whose area the premises are situated,
 - (c) the council within whose area the premises are situated (except where the council is the applicant),
 - (d) the appropriate chief constable, and
 - (e) the enforcing authority within the meaning of section 61 of the Fire (Scotland) Act 2005 (asp 5) in respect of the premises.
- (2) A notice under subsection (1) must be accompanied by a copy of the application.
- (3) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (1)(d), respond to the notice by giving the Licensing Board—
 - (a) one or other of the notices mentioned in subsection (4), and
 - (b) a report detailing—
 - (i) all cases of antisocial behaviour identified within the relevant period by constables as having taken place on, or in the vicinity of, the premises, and
 - (ii) all complaints or other representations made within the relevant period to constables concerning antisocial behaviour on, or in the vicinity of, the premises.
- (4) Those notices are—
 - (a) a notice stating that neither—
 - (i) the applicant, nor
 - (ii) in the cases where the applicant is neither an individual nor a council, or where the application is in respect of premises which are to be used wholly or mainly for the purposes of a club, any connected person, has been convicted of any relevant offence or foreign offence, or
 - (b) a notice specifying any convictions of—
 - (i) the applicant, or
 - (ii) in any of the cases mentioned in paragraph (a)(ii), any connected person, for a relevant offence or a foreign offence.
- (5) Where the appropriate chief constable—
 - (a) proposes to give a notice under subsection (4)(b), and
 - (b) considers that, having regard to any conviction to be specified in the notice, it is necessary for the purposes of the crime prevention objective that the application be refused,the chief constable may include in the notice a recommendation to that effect.
- (6) In this section—

“antisocial behaviour” has the same meaning as in section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),

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“neighbouring land” and, in relation to that expression, “notifiable interest” have such meanings as may be prescribed for the purposes of this section, and “relevant period” means the period of one year ending with the date on which the appropriate chief constable receives notice under subsection (1)(d).

22 Objections and representations

- (1) Where a premises licence application is made to a Licensing Board, any person may, by notice to the Licensing Board—
 - (a) object to the application on any ground relevant to one of the grounds for refusal specified in section 23(5), or
 - (b) make representations to the Board concerning the application, including, in particular, representations—
 - (i) in support of the application,
 - (ii) as to modifications which the person considers should be made to the operating plan accompanying the application, or
 - (iii) as to conditions which the person considers should be imposed.
- (2) The appropriate chief constable may, under subsection (1)(a), object to a premises licence application only on the ground that—
 - (a) the chief constable has reason to believe that—
 - (i) the applicant, or
 - (ii) in the cases where the applicant is neither an individual nor a council or where the application is in respect of premises which are to be used wholly or mainly for the purposes of a club, any connected person, is involved in serious organised crime, and
 - (b) by reason of that involvement, the chief constable considers that it is necessary for the purposes of the crime prevention objective that the application be refused.
- (3) Where a Licensing Board receives a notice of objection or representation under subsection (1) relating to any premises licence application made to the Board, the Board must—
 - (a) give a copy of the notice to the applicant in such manner and by such time as may be prescribed, and
 - (b) have regard to the objection or representation in determining the application, unless the Board rejects the notice under subsection (4).
- (4) A Licensing Board may reject a notice of objection or representation received by the Board under subsection (1) if the Board considers the objection or representation is frivolous or vexatious.
- (5) Where a Licensing Board rejects a notice of objection or representation under subsection (4), the Board may recover from the person who gave the notice any expenses incurred by the Board in considering the notice.
- (6) In any proceedings by a Licensing Board for the recovery of expenses under subsection (5), a copy of any minute of proceedings of the Licensing Board—
 - (a) recording the Board’s rejection of the notice and the grounds for the rejection, and
 - (b) certified by the clerk of the Board to be a true copy,

is sufficient evidence of the rejection and of the establishment of the ground for rejection.

23 Determination of premises licence application

- (1) A premises licence application received by a Licensing Board is to be determined in accordance with this section.
- (2) The Licensing Board must hold a hearing for the purpose of considering and determining the application.
- (3) In considering and determining the application, the Board must take account of the documents accompanying the application under section 20(2)(b).
- (4) The Board must, in considering and determining the application, consider whether any of the grounds for refusal applies and—
 - (a) if none of them applies, the Board must grant the application, or
 - (b) if any of them applies, the Board must refuse the application.
- (5) The grounds for refusal are—
 - (a) that the subject premises are excluded premises,
 - (b) that the application must be refused under section 25(2), 64(2) or 65(3),
 - (c) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives,
 - (d) that, having regard to—
 - (i) the nature of the activities proposed to be carried on in the subject premises,
 - (ii) the location, character and condition of the premises, and
 - (iii) the persons likely to frequent the premises,the Board considers that the premises are unsuitable for use for the sale of alcohol,
 - (e) that, having regard to the number and capacity of—
 - (i) licensed premises, or
 - (ii) licensed premises of the same or similar description as the subject premises,in the locality in which the subject premises are situated, the Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of that description, in the locality.
- (6) In considering, for the purposes of the ground for refusal specified in subsection (5)(c), whether the granting of the application would be inconsistent—
 - (a) with the crime prevention objective, the Licensing Board must, in particular, take into account—
 - (i) any conviction notice of which is given by the appropriate chief constable under subsection (4)(b) of section 21,
 - (ii) any recommendation of the chief constable included in the notice under subsection (5) of that section, and
 - (b) with any licensing objective, the Licensing Board must take into account any report made by the appropriate chief constable under subsection (3)(b) of section 21.

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- (7) Where the Licensing Board considers that—
- (a) they would refuse the application as made, but
 - (b) if a modification proposed by them were made to the operating plan for the subject premises accompanying the application, they would be able to grant the application,
- the Board must, if the applicant accepts the proposed modification, grant the application as modified.
- (8) Where the Licensing Board refuses the application—
- (a) the Board must specify the ground for refusal, and
 - (b) if the ground for refusal is that specified in subsection (5)(c), the Board must specify the licensing objective or objectives in question.
- (9) In subsection (5)(e), references to “licensed premises” do not include licensed premises in respect of which an occasional licence has effect.

24 Applicant’s duty to notify Licensing Board of convictions

- (1) This section applies where any of the persons specified in subsection (2) is convicted of a relevant or foreign offence during the period beginning with the making of a premises licence application and ending with determination of the application.
- (2) Those persons are—
- (a) the applicant, and
 - (b) where—
 - (i) the applicant is neither an individual nor a council, or
 - (ii) the premises in respect of which the licence is sought are used wholly or mainly for the purposes of a club,
 any connected person.
- (3) The applicant must, no later than one month after the date of the conviction, give notice of the conviction to the Licensing Board to which the application was made.
- (4) A notice under subsection (3) must specify—
- (a) the nature of the offence, and
 - (b) the date of the conviction.
- (5) Where the Licensing Board receives a notice under subsection (3) at any time before they have determined the application, the Board must—
- (a) suspend consideration of the application, and
 - (b) give notice of the conviction to the appropriate chief constable.
- (6) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (5)(b), respond to the notice by giving the Licensing Board one or other of the notices mentioned in subsection (7).
- (7) Those notices are—
- (a) a notice stating that the chief constable is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant offence or foreign offence, or
 - (b) a notice confirming the existence of the conviction and that it relates to a relevant offence or foreign offence.

- (8) Where the chief constable—
- (a) proposes to give a notice under subsection (7)(b), and
 - (b) considers that, having regard to the conviction specified in the notice, it is necessary for the purposes of the crime prevention objective that the application be refused,
- the chief constable may include in the notice a recommendation to that effect.
- (9) On receipt of the chief constable's notice under subsection (7), the Licensing Board must resume consideration of the application and determine it in accordance with section 23.
- (10) For that purpose, that section has effect as if—
- (a) references in it to a notice under section 21(4)(b) included references to a notice under subsection (7)(b) of this section, and
 - (b) references in it to a recommendation under section 21(5) included references to a recommendation under subsection (8) of this section.
- (11) A person who, without reasonable excuse, fails to comply with subsection (3) commits an offence.
- (12) A person guilty of an offence under subsection (11) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

25 Further application after refusal of premises licence application

- (1) Subsection (2) applies where a Licensing Board has refused a premises licence application in respect of any premises (such a refusal being referred to in this section as the "earlier refusal").
- (2) Subject to subsection (3), the Board must refuse any subsequent premises licence application in respect of the same premises made before the expiry of the period of one year beginning with the date of the earlier refusal.
- (3) Subsection (2) does not apply in relation to any subsequent application made during that period if—
- (a) at the time of the earlier refusal, the Board directed that the subsection would not apply to any subsequent application, or
 - (b) the Board is satisfied that there has been a material change of circumstances since the earlier refusal.

26 Issue of licence and summary

- (1) Where a Licensing Board grants a premises licence application, the Board must issue to the applicant—
- (a) a premises licence—
 - (i) in the prescribed form, and
 - (ii) containing the information and documents specified in subsection (2), and
 - (b) a summary of the licence in the prescribed form.
- (2) The information and documents referred to in subsection (1)(a)(ii) are—
- (a) the name and address of—

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- (i) the holder of the licence, and
- (ii) the premises manager in respect of the premises to which the licence relates,
- (b) a description of the premises in respect of which the licence is issued,
- (c) the date on which the licence takes effect,
- (d) the conditions to which the licence is subject, or, in relation to any such condition, a reference to another document in which details of the condition can be found,
- (e) the operating plan and layout plan in respect of the premises to which the licence relates, and
- (f) such other information as may be prescribed.

Conditions of premises licence

27 Conditions of premises licence

- (1) Except to the extent that schedule 3 provides otherwise, every premises licence is subject to the conditions specified in that schedule.
- (2) The Scottish Ministers may by regulations modify schedule 3 so as—
 - (a) to add such further conditions as they consider necessary or expedient for the purposes of any of the licensing objectives, or
 - (b) to extend the application of any condition specified in the schedule.
- (3) The Scottish Ministers must by regulations prescribe further conditions which Licensing Boards must impose on the granting by them of premises licences falling within subsection (4).
- (4) A premises licence falls within this subsection if the operating plan for the premises to which the licence relates specifies that the premises will, on any occasion, be open for a continuous period beginning on one day and ending after 1am on the following day.
- (5) The Scottish Ministers may by regulations prescribe further conditions as conditions which Licensing Boards may, at their discretion, impose on the granting by them of premises licences.
- (6) Without prejudice to subsection (5), where a Licensing Board grants a premises licence, the Board may impose such other conditions (in addition to those to which the licence is subject by virtue of subsection (1) or (3)) as they consider necessary or expedient for the purposes of any of the licensing objectives.
- (7) A Licensing Board may not impose a condition under subsection (6) which—
 - (a) is inconsistent with any condition—
 - (i) to which the premises licence is subject by virtue of subsection (1), or
 - (ii) prescribed under subsection (5),
 - (b) would have the effect of making any such condition more onerous or more restrictive, or
 - (c) relates to a matter (such as planning, building control or food hygiene) which is regulated under another enactment.
- (8) The conditions which may be—
 - (a) added under subsection (2)(a),

- (b) prescribed under subsection (5), or
 - (c) imposed under subsection (6),
- include, in particular, conditions of the kind described in subsection (9).
- (9) Those are conditions requiring anything to be done, or prohibiting or restricting the doing of anything, in connection with—
- (a) the sale of alcohol on the premises in respect of which a premises licence has effect, or
 - (b) any other activity carried on in such premises.
- (10) Where, under any provision of this Act, a Licensing Board has power to make a variation of the conditions to which a premises licence is subject, the power may not be exercised so as to have the effect of imposing a condition which the Board could not have imposed under this section on the granting of the licence.

Duration of premises licence

28 Period of effect of premises licence

- (1) A premises licence—
- (a) takes effect on such date as the Licensing Board issuing it may determine, and
 - (b) ceases to have effect on the occurrence of any of the events mentioned in subsection (5).
- (2) However, a premises licence is not to be taken to have ceased to have effect under subsection (1)(b) by virtue of the occurrence of any of the events mentioned in paragraphs (c) to (e) of subsection (5) if, within 28 days of the occurrence of the event, an application for the transfer of the licence is made under section 34(1).
- (3) If such an application is made but refused, the premises licence ceases to have effect on the refusal.
- (4) A premises licence does not have effect for any period during which it is suspended by virtue of any provision of this Act.
- (5) The events referred to in subsection (1)(b) are—
- (a) the premises licence is revoked under any provision of this Act,
 - (b) the licensed premises in respect of which the licence was issued cease to be used for the sale of alcohol,
 - (c) the premises licence holder, being an individual—
 - (i) dies, or
 - (ii) becomes incapable within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000 (asp 4),
 - (d) the premises licence holder, being an individual, a partnership or a company, becomes insolvent,
 - (e) the premises licence holder, being a person other than an individual, a partnership or a company, is dissolved, and
 - (f) the appropriate Licensing Board receives from the premises licence holder a notice under subsection (6).
- (6) That is a notice—

- (a) accompanied by the premises licence, or where that is not practicable, by a statement of reasons for failure to produce the licence, and
 - (b) stating that the licence holder wishes to surrender the licence.
- (7) For the purposes of subsection (5)(d)—
- (a) an individual or partnership becomes insolvent on—
 - (i) the approval of a voluntary arrangement proposed by the individual or partnership,
 - (ii) being adjudged bankrupt,
 - (iii) the individual's or partnership's estate being sequestrated,
 - (iv) entering into a deed of arrangement made for the benefit of creditors, or
 - (v) granting a trust deed for creditors, and
 - (b) a company becomes insolvent on—
 - (i) the approval of a voluntary arrangement proposed by its creditors,
 - (ii) the appointment of an administrator or administrative receiver in respect of it, or
 - (iii) going into liquidation.
- (8) An expression used in subsection (7) which is also used in the Bankruptcy (Scotland) Act 1985 (c. 66) or the Insolvency Act 1986 (c. 45) has the same meaning in that subsection as it has in that Act.

Variation of premises licence

29 Application to vary premises licence

- (1) A premises licence holder may apply to the appropriate Licensing Board for a variation of the licence.
- (2) An application under subsection (1) must be accompanied by—
 - (a) the premises licence to which the application relates, or
 - (b) if that is not practicable, a statement of the reasons for failure to produce the licence.
- (3) An application under subsection (1) which complies with subsection (2) is referred to in this Act as a “premises licence variation application”.
- (4) Sections 21(1) and (2) and 22 apply in relation to a premises licence variation application (other than one in which the only variation sought is a minor variation) as they apply to a premises licence application.
- (5) In this Act, “variation”, in relation to a premises licence, means any variation of—
 - (a) any of the conditions to which the licence is subject (other than those to which the licence is subject by virtue of section 27(1)),
 - (b) any of the information contained in the operating plan contained in the licence,
 - (c) the layout plan contained in the licence, or
 - (d) any other information contained or referred to in the licence,
 and includes an addition, deletion or other modification.
- (6) In this Act, “minor variation” means—

- (a) any variation of the layout plan, if the variation does not result in any inconsistency with the operating plan,
- (b) where, under the operating plan contained in the licence, children or young persons are allowed entry to the premises, any variation reflecting any restriction or proposed restriction of the terms on which they are allowed entry to the premises,
- (c) any variation of the information contained in the licence relating to the premises manager (including a variation so as to substitute a new premises manager), and
- (d) any other variation of such description as may be prescribed for the purposes of this subsection.

30 Determination of application for variation

- (1) A premises licence variation application received by a Licensing Board is to be determined by the Board in accordance with this section.
- (2) If the variation sought is a minor variation, the Board must grant the application.
- (3) In any other case, the Licensing Board must hold a hearing for the purpose of considering and determining the application.
- (4) Where a hearing is held under subsection (3), the Board must consider whether any of the grounds for refusal applies and—
 - (a) if none of them applies, the Board must grant the application,
 - (b) if any of them applies, the Board must refuse the application.
- (5) The grounds for refusal are—
 - (a) that the application must be refused under section 32(2), 64(2) or 65(3),
 - (b) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives,
 - (c) that, having regard to—
 - (i) the nature of the activities carried on or proposed to be carried on in the subject premises,
 - (ii) the location, character and condition of the premises, and
 - (iii) the persons likely to frequent the premises,the Board considers that the premises are unsuitable for use for the sale of alcohol in accordance with the proposed variation,
 - (d) that, having regard to the number and capacity of—
 - (i) licensed premises, or
 - (ii) licensed premises of the same or similar description as the subject premises (taking account of the proposed variation),in the locality in which the subject premises are situated, the Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of that description, in the locality.
- (6) Where the Licensing Board grants the application, the Board may make a variation of the conditions to which the licence is subject.
- (7) Where the Licensing Board refuses the application—

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- (a) the Board must specify the ground for refusal, and
 - (b) if the ground for refusal is that specified in subsection (5)(b), the Board must specify the licensing objective or objectives in question.
- (8) In subsection (5)(d), references to “licensed premises” do not include references to licensed premises in respect of which an occasional licence has effect.

31 Variation to substitute new premises manager

- (1) This section applies in relation to a premises licence variation application where—
- (a) the variation sought is the substitution of another individual as the premises manager, and
 - (b) the applicant requests in the application that the variation should have immediate effect.
- (2) Where this section applies, the premises licence to which the application relates has effect during the application period as if it were varied as proposed in the application.
- (3) In subsection (2), “the application period” means the period—
- (a) beginning when the application is received by the Licensing Board, and
 - (b) ending—
 - (i) when the variation takes effect, or
 - (ii) if the application is withdrawn before it is determined, when it is withdrawn.

32 Further application after refusal of application for variation

- (1) Subsection (2) applies where a Licensing Board has refused a premises licence variation application (such a refusal being referred to in this section as the “earlier refusal”).
- (2) Subject to subsection (3), the Board must refuse any subsequent premises licence variation application—
- (a) in respect of the same premises licence, and
 - (b) seeking the same variation,
- made before the expiry of the period of one year beginning with the date of the earlier refusal.
- (3) Subsection (2) does not apply in relation to any subsequent application made during that period if—
- (a) at the time of the earlier refusal, the Board directed that the subsection would not apply to any subsequent application, or
 - (b) the Board is satisfied that there has been a material change of circumstances since the earlier refusal.

Transfer of premises licence

33 Transfer on application of licence holder

- (1) A premises licence holder may apply to the appropriate Licensing Board for the transfer of the licence to such person as is specified in the application (such person being referred to in this section as the “transferee”).
- (2) The transferee may not be an individual under the age of 18.
- (3) An application under subsection (1) must be accompanied by—
 - (a) the premises licence to which the application relates, or
 - (b) if that is not practicable, a statement of the reasons for failure to produce the licence.
- (4) Where a Licensing Board receives an application under subsection (1), the Board must give notice of it, together with a copy of the application, to the appropriate chief constable.
- (5) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (4), respond to the notice by giving the Licensing Board one or other of the notices mentioned in subsection (6).
- (6) Those notices are—
 - (a) a notice stating that neither—
 - (i) the transferee, nor
 - (ii) where the transferee is neither an individual nor a council, any connected person,has been convicted of any relevant offence or foreign offence, or
 - (b) a notice specifying any convictions of—
 - (i) the transferee, and
 - (ii) where the transferee is neither an individual nor a council, any connected person,for a relevant offence or a foreign offence.
- (7) Where the appropriate chief constable—
 - (a) proposes to give a notice under subsection (6)(b), and
 - (b) considers that, having regard to any conviction to be specified in the notice, it is necessary for the purposes of the crime prevention objective that the application for transfer of the licence to the transferee be refused,the chief constable may include in the notice a recommendation to that effect.
- (8) Where the Licensing Board receives a notice under subsection (6)(a) in relation to an application under subsection (1), the Board must grant the application.
- (9) Where the Licensing Board receives a notice under subsection (6)(b) in relation to an application under subsection (1), the Board must hold a hearing for the purpose of considering and determining the application.
- (10) Where a hearing is held under subsection (9), the Licensing Board must, having regard to the chief constable’s notice—
 - (a) if satisfied that it is necessary to do so for the purposes of the crime prevention objective, refuse the application, or

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- (b) if not so satisfied, grant the application.

34 Transfer on application of person other than licence holder

- (1) A person other than—
- (a) the holder of a premises licence, or
 - (b) an individual under the age of 18,
- (being a person of a prescribed description) may, within 28 days of the occurrence of any of the events specified in subsection (3), apply to the appropriate Licensing Board for the transfer to that person of the licence.
- (2) An application under subsection (1) must be accompanied by—
- (a) the premises licence to which the application relates, or
 - (b) if that is not practicable, a statement of the reasons for failure to produce the licence.
- (3) The events referred to in subsection (1) are—
- (a) the premises licence holder, being an individual—
 - (i) dies, or
 - (ii) becomes incapable within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000 (asp 4),
 - (b) the premises licence holder, being an individual, a partnership or a company, becomes insolvent,
 - (c) the premises licence holder, being a person other than an individual, a partnership or a company, is dissolved, and
 - (d) the business carried on in the licensed premises to which the licence relates is transferred (whether by sale or otherwise) to another person.
- (4) Subsections (4) to (10) of section 33 apply for the purposes of an application under subsection (1) of this section as they apply for the purposes of an application under subsection (1) of that section, but as if references in them to the transferee were references to the applicant in relation to the application under subsection (1) of this section.
- (5) Subsections (7) and (8) of section 28 apply for the purposes of subsection (3)(b) of this section as they apply for the purposes of subsection (5)(d) of that section.

35 Variation on transfer

- (1) A person making an application to a Licensing Board under section 33(1) or 34(1) for transfer of a premises licence may also make an application to the Board for a variation of the licence.
- (2) Sections 29 and 30 apply in relation to an application under subsection (1) for a variation as they apply to a premises licence variation application.
- (3) Where—
- (a) an application is made under subsection (1), and
 - (b) the applicant intimates to the Licensing Board that the application under section 33(1) or 34(1) for transfer of the premises licence is contingent on the grant of the application under subsection (1),

the Licensing Board must determine the application under subsection (1) before determining the application for the transfer of the licence.

- (4) In such a case, if the Licensing Board refuses the application under subsection (1), the application for the transfer of the licence falls.
- (5) In any other case where an application under subsection (1) is made—
 - (a) the Licensing Board must first determine the application for transfer of the licence before determining the application under subsection (1), and
 - (b) if the application for the transfer of the licence is refused, the application under subsection (1) falls.

Review of premises licence

36 Application for review of premises licence

- (1) Any person may apply to the appropriate Licensing Board in respect of any licensed premises in relation to which a premises licence has effect for a review of the licence on any of the grounds for review.
- (2) An application under subsection (1) is referred to in this Act as a “premises licence review application”.
- (3) The grounds for review referred to in subsection (1) are—
 - (a) that one or more of the conditions to which the premises licence is subject has been breached, or
 - (b) any other ground relevant to one or more of the licensing objectives.
- (4) A Licensing Standards Officer may make a premises licence review application on the ground specified in subsection (3)(a) only if—
 - (a) in relation to the alleged ground for review, the Officer or any other Licensing Standards Officer has issued to the licence holder a notice under section 14(2)(a)(i), and
 - (b) the licence holder has failed to take the action specified in the notice to the satisfaction of the Officer.
- (5) A premises licence review application must specify the alleged ground for review, including in particular—
 - (a) where the ground is that specified in subsection (3)(a), the condition or conditions alleged to have been breached,
 - (b) where the ground is that specified in subsection (3)(b), the licensing objective or objectives to which the alleged ground of review relates.
- (6) The Licensing Board may reject a premises licence review application if the Board considers the application—
 - (a) is vexatious or frivolous, or
 - (b) does not disclose any matter relevant to any ground for review.
- (7) Where the Licensing Board rejects a premises licence review application under subsection (6), the Board—
 - (a) must give notice of the decision, and the reasons for it, to the applicant, and

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- (b) where it is rejected on the ground that it is frivolous or vexatious, may recover from the applicant any expenses incurred by the Board in considering the application.
- (8) In any proceedings by a Licensing Board for the recovery of expenses under subsection (7)(b), a copy of any minute of proceedings of the Licensing Board—
- (a) recording the Board’s rejection of the application and the grounds for rejection, and
 - (b) certified by the clerk of the Board to be a true copy,
- is sufficient evidence of the rejection and of the establishment of the grounds for rejection.

37 Review of premises licence on Licensing Board’s initiative

- (1) The appropriate Licensing Board in respect of any licensed premises in relation to which a premises licence has effect may, on their own initiative, propose to review the licence on any of the grounds for review.
- (2) A proposal under subsection (1) is referred to in this Act as a “premises licence review proposal”.
- (3) The grounds for review referred to in subsection (1) are those specified in subsection 36(3).
- (4) A premises licence review proposal must specify the alleged ground for review, including in particular—
 - (a) where the ground is that specified in subsection 36(3)(a), the condition or conditions alleged to have been breached,
 - (b) where the ground is that specified in subsection 36(3)(b), the licensing objective or objectives to which the alleged ground of review relates.

38 Review hearing

- (1) Where a Licensing Board—
 - (a) makes a premises licence review proposal, or
 - (b) receives a premises licence review application,
 the Board must hold a hearing for the purposes of considering and determining the proposal or application unless, in the case of a premises licence review application, the Board has rejected the application under subsection 36(6).
- (2) A hearing under subsection (1) is referred to in this Act as a “review hearing”.
- (3) Where a review hearing is to be held, the Licensing Board must—
 - (a) in the case of a premises licence review application, give notice of the hearing to the applicant, and
 - (b) give notice of the hearing and a copy of the premises licence review proposal or application to—
 - (i) the licence holder, and
 - (ii) any Licensing Standards Officer for the area in which the premises concerned are situated, unless, in the case of a premises licence review application, the applicant is such an Officer.

- (4) Where a Licensing Standards Officer receives under subsection (3)(b)(ii) a copy of a premises licence review proposal or application—
 - (a) the Officer must, before the review hearing, prepare and submit to the Licensing Board a report on the proposal or application, and
 - (b) the Licensing Board must take the report into account at the hearing.
- (5) The Licensing Board may, for the purposes of the review hearing—
 - (a) obtain further information from such persons, and in such manner, as the Board thinks fit, and
 - (b) take the information into account.
- (6) In particular, the Board may—
 - (a) request—
 - (i) the attendance at the review hearing of any person for the purpose of providing information, and
 - (ii) the production at the review hearing by any person of any documents in that person's possession or under that person's control, and
 - (b) take into account any information relevant to any ground for review even though it is not relevant to any circumstances alleged in the review proposal or application under consideration.

39 Licensing Board's powers on review

- (1) At a review hearing in relation to any premises licence, the Licensing Board may, if satisfied that a ground for review is established (whether or not on the basis of any circumstances alleged in the premises licence review proposal or application considered at the hearing) take such of the steps mentioned in subsection (2) as the Board considers necessary or appropriate for the purposes of any of the licensing objectives.
- (2) Those steps are—
 - (a) to issue a written warning to the licence holder,
 - (b) to make a variation of the licence,
 - (c) to suspend the licence for such period as the Board may determine,
 - (d) to revoke the licence.
- (3) On making a variation under subsection (2)(b), the Board may provide for the variation to apply only for such period as they may determine.

40 Review of Licensing Board's decision to vary or suspend licence

Where a Licensing Board has made a variation under subsection (2)(b) of section 39 or suspended the licence under subsection (2)(c) of that section, the Board may—

- (a) on the application of the licence holder, and
 - (b) if satisfied that, by reason of a change of circumstances, the variation or suspension is no longer necessary,
- revoke the variation or suspension.

Conviction of licence holder etc. for relevant or foreign offence

41 Duty to notify court of premises licence

- (1) Subsection (2) applies where—
 - (a) a person who holds a premises licence is charged with a relevant offence, or
 - (b) a person charged with a relevant offence is granted a premises licence after the person's first appearance in court in connection with the offence but before—
 - (i) conviction and sentencing for the offence or acquittal, or
 - (ii) where an appeal is brought against conviction, sentence or acquittal, the disposal of the appeal.
- (2) The person must, not later than the person's first appearance or, as the case may be, next appearance in court in connection with the offence—
 - (a) produce to the court the premises licence, or
 - (b) if that is not practicable, notify the court of—
 - (i) the existence of the premises licence,
 - (ii) the identity of the Licensing Board which issued it, and
 - (iii) the reasons why it is not practicable to produce the licence.
- (3) A person who, without reasonable excuse, fails to comply with subsection (2) commits an offence.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

42 Court's duty to notify Licensing Board of convictions

- (1) This section applies where the clerk of a court in Scotland by or before which a person is convicted of a relevant offence is aware that the person holds a premises licence.
- (2) The clerk of the court must, as soon as reasonably practicable after the conviction, give notice of the conviction to the Licensing Board which issued the premises licence held by the person convicted.

43 Licence holder's duty to notify Licensing Board of convictions

- (1) This section applies where any of the persons specified in subsection (2) is convicted of a relevant or foreign offence.
- (2) Those persons are—
 - (a) the holder of a premises licence, and
 - (b) where—
 - (i) the holder of such a licence is neither an individual nor a council, or
 - (ii) the premises in respect of which such a licence is held are used wholly or mainly for the purposes of a club,any connected person.
- (3) The holder of the premises licence must, no later than one month after the date of the conviction, give notice of the conviction to the Licensing Board which issued the premises licence held by the licence holder.

- (4) A notice of conviction under subsection (3) must—
 - (a) specify—
 - (i) the nature of the offence, and
 - (ii) the date of conviction, and
 - (b) be accompanied by—
 - (i) the premises licence held by the licence holder, or
 - (ii) if that is not practicable, a statement of the reasons for failure to produce the licence.
- (5) A premises licence holder who fails, without reasonable excuse, to comply with subsection (3) commits an offence.
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

44 Procedure where Licensing Board receives notice of conviction

- (1) This section applies where the Licensing Board which issued a premises licence receives a notice of conviction relating to—
 - (a) the holder of the licence, or
 - (b) where—
 - (i) the holder of the licence is neither an individual nor a council, or
 - (ii) the premises in respect of which the licence is held are used wholly or mainly for the purposes of a club,a connected person.
- (2) The Licensing Board must give notice of the conviction to the appropriate chief constable.
- (3) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (2), respond to the notice by giving the Licensing Board one or other of the notices mentioned in subsection (4).
- (4) Those notices are—
 - (a) a notice stating that the chief constable is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant or foreign offence, or
 - (b) a notice confirming the existence of the conviction and that it relates to a relevant or foreign offence.
- (5) Where the chief constable—
 - (a) proposes to give a notice under subsection (4)(b), and
 - (b) considers that, having regard to the conviction specified in the notice, it is necessary for the purposes of the crime prevention objective that the premises licence should be varied, suspended or revoked,the chief constable may include in the notice a recommendation to that effect.
- (6) If the Licensing Board receives from the appropriate chief constable a notice under subsection (4)(a), the Licensing Board may not take any further action in relation to the conviction.

- (7) If the Licensing Board receives from the appropriate chief constable a notice under subsection (4)(b), the Licensing Board must make a premises licence review proposal in respect of the premises licence.
- (8) In this section, “notice of conviction” means a notice under section 42(2) or 43(3).

Premises under construction or conversion

45 Provisional premises licence

- (1) A premises licence application may be made in relation to any premises despite the fact that, at the time the application is made, the premises are yet to be, or are in the course of being, constructed or converted for use as licensed premises.
- (2) A premises licence application in respect of any such premises is referred to in this Act as a “provisional premises licence application”.
- (3) A premises licence issued in respect of any such premises does not take effect unless and until it is confirmed by the Licensing Board which issued it in accordance with section 46.
- (4) If a premises licence issued in respect of any such premises is not confirmed before the end of the provisional period, then at the end of that period the licence is treated as revoked.
- (5) A premises licence—
- (a) to which subsection (3) applies, and
 - (b) which has not been confirmed in accordance with section 46,
- is referred to in this Act as a “provisional premises licence”.
- (6) The provisional period, in relation to a provisional premises licence, is the period of 2 years beginning with the date of issue of the licence.
- (7) On the application of the holder of a provisional premises licence made before the expiry of the provisional period, the Licensing Board which issued the licence may, if satisfied as to the matter mentioned in subsection (8), extend the provisional period by such period as the Board considers appropriate.
- (8) That matter is that—
- (a) completion of the construction or conversion of the premises to which the licence relates has been delayed, and
 - (b) the delay has been caused by factors outwith the premises licence holder’s control.
- (9) Where the provisional period in relation to any provisional premises licence has been extended under subsection (7), references in this section and section 46 to the provisional period are to that period as so extended.
- (10) Section 20 has effect in relation to a provisional premises licence application as if—
- (a) in subsection (2)(b), for sub-paragraph (iii) there were substituted—
“(iii) the certificate required by section 50(2),” and
 - (b) in subsection (4), paragraph (g) were omitted.

- (11) In this section, “construct” and “convert” have the same meanings as they have for the purposes of the Building (Scotland) Act 2003 (asp 8).

46 Confirmation of provisional premises licence

- (1) The holder of a provisional premises licence may, at any time before the expiry of the provisional period in relation to the licence, apply to the Licensing Board which issued the licence for confirmation of the licence.
- (2) An application under subsection (1) must be accompanied by—
- (a) the provisional premises licence,
 - (b) the operating plan for the premises to which the licence relates,
 - (c) the layout plan for the premises, and
 - (d) the certificates required by section 50(3).
- (3) The operating plan referred to in subsection (2)(b) must, in particular and without prejudice to subsection (4) of section 20, contain a statement of the information specified in paragraph (g) of subsection (4) of that section.
- (4) Where a Licensing Board which issued a provisional premises licence receives an application under subsection (1) in respect of the licence, the Board must, if satisfied as to the matters mentioned in subsection (5), confirm the licence.
- (5) Those matters are that—
- (a) since the provisional premises licence was issued, or
 - (b) if, since that time, an application for a variation of the licence has been granted under section 30, since the last such application was granted,
- there has been no variation (other than a minor variation) made to the operating plan or layout plan for the premises to which the licence relates.
- (6) Where a Licensing Board confirms a provisional premises licence under subsection (4), the Board may, for the purpose specified in subsection (7), make a variation of the conditions to which the licence is subject.
- (7) That purpose is ensuring consistency with any licensing policy statement or supplementary licensing policy statement published since the licence was issued.

47 Temporary premises licence

- (1) This section applies where any licensed premises (other than premises in respect of which a provisional premises licence or occasional licence has effect) are undergoing, or are to undergo, reconstruction or conversion (referred to in this section as the “principal premises”).
- (2) The appropriate Licensing Board in relation to the principal premises may—
- (a) on the application of the holder of the premises licence in respect of the premises, and
 - (b) if satisfied as to the matters mentioned in subsection (3),
- issue to the applicant a premises licence in respect of such other premises within the Licensing Board’s area as are specified in the application (such premises being referred to in this section as the “temporary premises”).
- (3) The matters referred to in subsection (2)(b) are—

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- (a) that the temporary premises are suitable for use for the sale of alcohol, and
 - (b) that it is necessary to grant the application to enable the applicant to carry on business pending reconstruction or conversion of the principal premises.
- (4) A premises licence issued under subsection (2) is referred to in this Act as a “temporary premises licence”.
- (5) A temporary premises licence—
- (a) has effect for such period of not more than 2 years beginning with the date of its issue as the Licensing Board may determine, and
 - (b) is subject to the same conditions as those to which the premises licence in respect of the principal premises is subject at the time the temporary premises licence is issued, with such exceptions or variations (if any) as the Licensing Board considers appropriate.
- (6) The Licensing Board may, on the application of the holder of a temporary premises licence, extend the period during which it has effect for such further period of not more than 12 months as they may determine.
- (7) In this section—
- “conversion” has the same meaning as it has for the purposes of the Building (Scotland) Act 2003 (asp 8), and
 - “reconstruction” includes alteration, re-erection and extension.

Updating of licence

48 Notification of change of name or address

- (1) A premises licence holder must, not later than one month after the occurrence of any change in—
- (a) the licence holder’s name or address, or
 - (b) the name or address of the premises manager specified in the licence,
- give the appropriate Licensing Board notice of the change.
- (2) A notice under subsection (1) must be accompanied by the premises licence or, if that is not practicable, by a statement of the reasons for the failure to produce the licence.
- (3) A premises licence holder who fails, without reasonable excuse, to comply with subsection (1), commits an offence.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

49 Licensing Board’s duty to update premises licence

- (1) Subsection (2) applies where a Licensing Board—
- (a) receives a notice under section 48(1) in relation to a premises licence,
 - (b) grants a premises licence variation application or otherwise makes a variation of a premises licence,
 - (c) grants an application under section 33(1) or 34(1) for the transfer of a premises licence,
 - (d) in relation to a provisional premises licence, grants—

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- (i) an application under section 45(7) for an extension of the provisional period, or
 - (ii) an application under section 46(1) for confirmation of the licence,
 - (e) in relation to a temporary premises licence, grants an application under section 47(6) for an extension of the period during which the licence has effect, or
 - (f) on reviewing a premises licence, takes any of the steps referred to in section 39(1).
- (2) The Board must make any necessary amendments to the licence and, if necessary, issue a new summary of the licence.
- (3) Where a Licensing Board is not in possession of a premises licence and—
- (a) the licence has ceased to have effect under any provision of this Act, or
 - (b) the Board requires the licence for the purpose of complying with the duty under subsection (2),
- the Board may require the licence holder to produce the licence to the Board within 14 days from the date on which the requirement is notified.
- (4) A licence holder who, without reasonable excuse, fails to comply with a requirement made under subsection (3), commits an offence.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Miscellaneous

50 Certificates as to planning, building standards and food hygiene

- (1) A premises licence application (other than a provisional premises licence application) must be accompanied by—
- (a) a planning certificate,
 - (b) a building standards certificate, and
 - (c) if food is to be supplied on the premises, a food hygiene certificate,
- in respect of the subject premises.
- (2) A provisional premises licences application must be accompanied by a provisional planning certificate in respect of the subject premises.
- (3) An application under section 46(1) in respect of any premises must be accompanied by—
- (a) if the provisional planning certificate which accompanied the provisional premises licence application in respect of the subject premises consisted of outline planning permission, a planning certificate,
 - (b) a building standards certificate, and
 - (c) if food is to be supplied on the premises, a food hygiene certificate,
- in respect of the subject premises.
- (4) A planning certificate is a certificate signed on behalf of the appropriate authority and stating—
- (a) that planning permission under the Town and Country Planning (Scotland) Act 1997 (c. 8) (referred to in this section as “the 1997 Act”) in respect of any

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- development of the subject premises in connection with their proposed use as licensed premises has been obtained, or
- (b) that no such planning permission is required.
- (5) A provisional planning certificate is a certificate signed on behalf of the appropriate authority and stating—
- (a) that planning permission or outline planning permission under the 1997 Act has been obtained in respect of the construction or conversion of the subject premises, or
- (b) that no such planning permission is required.
- (6) A building standards certificate is a certificate signed on behalf of the appropriate authority and stating—
- (a) that a completion certificate has been accepted under section 18 of the Building (Scotland) Act 2003 (asp 8) (referred to in this section as “the 2003 Act”) in respect of any construction or conversion of the subject premises in connection with their proposed use as licensed premises,
- (b) that permission for the temporary occupation or use of the premises has been granted under section 21(3) of the 2003 Act, or
- (c) that no such completion certificate or permission is required.
- (7) A food hygiene certificate is a certificate signed on behalf of the appropriate authority and stating that the subject premises comply with the requirements of regulations made under section 16 of the Food Safety Act 1990 (c. 16) (referred to in this section as “the 1990 Act”) relating to construction, layout, drainage, ventilation, lighting and water supply or concerned with the provision of sanitary and washing facilities.
- (8) In this section—
- “appropriate authority” means—
- (a) in relation to a planning certificate or provisional planning certificate, the planning authority (within the meaning of the 1997 Act) for the area in which the subject premises are situated,
- (b) in relation to a building standards certificate, the council for that area,
- (c) in relation to a food hygiene certificate, the food authority (within the meaning of the 1990 Act) for that area,
- “construction” and “conversion” have the same meanings as they have in the 2003 Act,
- “development” has the same meaning as it has in the 1997 Act.

51 Notification of determinations

- (1) Where a Licensing Board grants or refuses an application under this Part, the Board must give notice of the grant or refusal to—
- (a) the applicant,
- (b) the appropriate chief constable, and
- (c) in the case of the grant or refusal of a premises licence application, any person who gave a notice of objection or representation under section 22(1) in respect of the application.
- (2) A person to whom notice is given under subsection (1) may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the grant or refusal of the application.

- (3) Where the clerk of a Licensing Board receives a notice under subsection (2), the Board must issue a statement of the reasons for the grant or refusal of the application to—
 - (a) the person giving the notice, and
 - (b) each other person to whom the Board gave notice under subsection (1).
- (4) A statement of reasons under subsection (3) must be issued—
 - (a) by such time, and
 - (b) in such form and manner,as may be prescribed.

52 Duty to keep, display and produce premises licence

- (1) A premises licence holder must secure that the premises licence, or a certified copy of it, is kept at the premises in respect of which it is issued in the custody or under the control of—
 - (a) the licence holder, or
 - (b) the premises manager.
- (2) A premises licence holder must secure that the summary of the licence, or a certified copy of the summary, is prominently displayed on the premises so as to be capable of being read by anyone frequenting the premises.
- (3) A premises licence holder who fails, without reasonable excuse, to comply with subsection (1) or (2) commits an offence.
- (4) Any of the persons specified in subsection (5) may require the person in whose custody or under whose control a premises licence (or a certified copy of it) is kept by virtue of subsection (1) to produce the licence (or certified copy) for inspection.
- (5) The persons referred to in subsection (4) are—
 - (a) a constable, and
 - (b) a Licensing Standards Officer for the council area in which the premises are situated.
- (6) A person who fails, without reasonable excuse, to comply with a requirement made under subsection (4) commits an offence.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

53 Theft, loss etc. of premises licence or summary

- (1) This section applies where the appropriate Licensing Board receives from a premises licence holder an application for a replacement premises licence or a replacement summary.
- (2) If satisfied that—
 - (a) the premises licence held by the licence holder or, as the case may be, the summary of it has been lost, stolen, damaged or destroyed, and
 - (b) where it has been lost or stolen, the licence holder has reported the loss or theft to the police,

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the Licensing Board must issue to the licence holder a replacement licence or, as the case may be, a replacement summary.

- (3) A replacement licence or a replacement summary is a copy of the licence or summary—
- (a) in the form in which it existed immediately before it was lost, stolen, damaged or destroyed, and
 - (b) certified by the Board to be a true copy.
- (4) In this Act, references to—
- (a) a premises licence include references to a replacement premises licence,
 - (b) a summary of a premises licence include references to a replacement summary,
- issued under this section.

54 Dismissal, resignation, death etc. of premises manager

- (1) This section applies where any of the events specified in subsection (2) occurs in relation to any licensed premises in respect of which a premises licence has effect.
- (2) Those events are—
- (a) the premises manager ceases to work at the premises,
 - (b) the premises manager becomes incapable for any reason of acting as premises manager,
 - (c) the premises manager dies, or
 - (d) the personal licence held by the premises manager is revoked or suspended.
- (3) The premises licence holder must, not later than 7 days after the occurrence of the event, give notice of it to the appropriate Licensing Board.
- (4) Subsection (5) applies if—
- (a) subsection (3) is complied with, and
 - (b) within the period of 6 weeks beginning with the day on which the event occurs, a premises licence variation application is made seeking a variation of the premises licence in respect of the premises so as to substitute another individual as the premises manager.
- (5) Any breach of the conditions specified in paragraphs 4 and 5 of schedule 3 in the period beginning with the occurrence of the event and ending with the receipt by the Licensing Board of the application referred to in subsection (4)(b) is, so far as it is attributable to the occurrence of the event, to be disregarded.
- (6) If no such application as is mentioned in paragraph (b) of subsection (4) is made within the period mentioned in that paragraph, then, at the end of that period, the Licensing Board must vary the premises licence so that there is no longer any premises manager specified in it.

55 Certified copies

Any reference in this Part to a certified copy of a premises licence or of a summary of such a licence is a reference to a copy of the licence or summary certified to be a true copy by—

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- (a) the Licensing Board,
- (b) a solicitor or notary public, or
- (c) a person of a prescribed description.