

SPECIAL ISSUE

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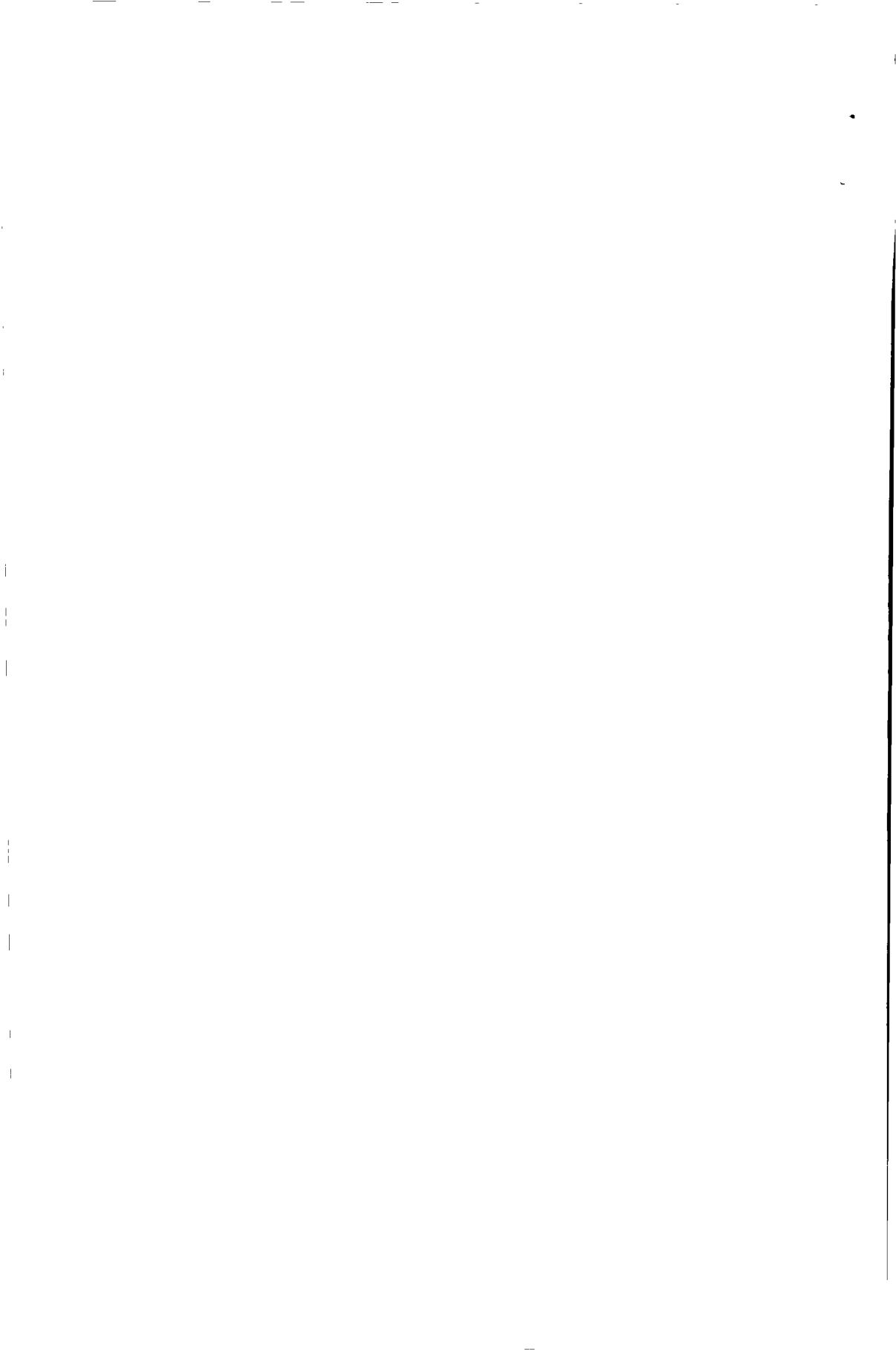
**MACHAKOS COUNTY GAZETTE
SUPPLEMENT**

ACTS, 2014

NAIROBI, 29th December, 2014

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**THE MACHAKOS COUNTY LIQUOR LICENSING
ACT, 2014**

AN ACT of the Machakos County Assembly to provide for liquor licensing to give effect to paragraph 4 of Part 2 of the Fourth Schedule to the Constitution and for connected purposes.

ENACTED by the Machakos County Assembly as follows—

PART 1—PRELIMINARY

1. This Act may be cited as the Machakos County Liquor Licensing Act, 2014. Short title

2. In this Act unless the context otherwise requires— Interpretation.

“alcohol” means the product known as ethyl alcohol or any product obtained by fermentation or distillation of any fermented alcoholic product, rectified either once or more often, whatever the origin, and shall include synthetic ethyl alcohol, but shall not include methyl alcohol and alcohol completely denatured in accordance with the prescribed formulas;

“alcoholic drink” includes alcohol, spirit, wine, beer, traditional alcoholic drink, and any one or more of such varieties containing one-half of one per cent or more of alcohol by volume, including mixed alcoholic drinks, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being;

“authorised officer” means an authorised officer within the meaning of section 13;

“County Executive Member” means County Executive Committee Member for the time being responsible for matters relating to control of alcohol;

“Directorate” means the Directorate established under section 4;

“entity” includes a company, corporation, firm, partnership, association, society, trust or other organisation, whether incorporated or not;

“licensee” means a person who holds a licence granted

under this Act;

“magistrate” means a magistrate above the rank of resident magistrate;

“manager” in relation to—

a cinema or theatre, includes an assistant manager, a person holding an office analogous to that of a manager or assistant manager of the cinema or theatre or any person in charge or in control of the cinema or theatre;

(a) a health institution, includes the owner or a person in charge or in control of the health institution;

(b) a specified building, includes the owner, occupier, lessee or the person in charge or in control of the specified building;

“manufacture” means the process of preparing an alcoholic drink and includes brewing, distilling, tapping, packaging, labelling, distribution or importation of an alcoholic drink for sale;

“manufacturer”, in respect of an alcoholic drink, includes any entity that is involved in its manufacture, including an entity that controls or is controlled by the manufacturer, or that is controlled by the same entity that controls the manufacturer;

“retailer” means a person who is engaged in a business that includes the sale of any alcoholic drink to consumers;

“sell” includes—

(a) barter or exchange without use of money;

(b) offer or expose for sale, barter or exchange without use of money;

(c) supply, or offer to supply, in circumstances in which the supplier derives or would derive, a direct or indirect pecuniary benefit;

(d) supply or offer to supply, gratuitously but with a view of gaining or maintaining custom, or otherwise with a view for commercial gain.

3. The object and purpose of this Act is to establish a legislative framework to—

Object and purpose.

(a) regulate the production, sale, distribution,

consumption and outdoor advertising of alcoholic drinks;

- (b) ensure that the production, sale, distribution and consumption of alcoholic drinks conform to certain health, social and infrastructural requirements;
- (c) protect underage persons from access and exposure to liquor;
- (d) protect consumers of liquor from misleading and deceptive inducements;
- (e) provide for measures to prevent illicit trade in alcoholic drinks;
- (f) provide for public participation in the regulation of alcoholic drinks; and
- (g) promote public education on the lawful dealings in alcoholic drinks.

PART II—ADMINISTRATION

4. (1) There is established a Directorate to be known as the Machakos County Directorate of Liquor Control which shall be a public office in the County Government.

Establishment of
Directorate and
Committee.

(2) The Directorate shall comprise of the Director and staff appointed by the County Public Service Board.

(3) There shall be a Liquor Licensing Committee whose members shall be appointed by the Executive Committee Member and which shall be comprised of—

- (a) One representative each from the county departments responsible for—
 - (i) finance;
 - (ii) health;
 - (iii) decentralized units;
 - (iv) education;
 - (v) trade,
- (b) one representative each from—

- (i) hotel industry;
- (ii) civil society and;
- (iii) private sector; and

(c) the Director who shall be the Secretary.

(4) In appointing the members of the Committee under section 3 (b), the County Executive member shall ensure that—

- (a) the membership reflects the regional and ethnic diversity of the people within the county; and
- (b) not more than two-thirds of the members are of the same gender.

(5) The Committee shall receive and consider applications for liquor licenses and make recommendations to the Director in accordance with this Act;

(6) The Directorate and any other office established under this Act shall be answerable to the County Executive Member.

5. (1) The appointment of the Director shall be—

- (a) carried out in a competitive and transparent manner;
- (b) based on merit; and
- (c) in line with the constitutional requirements for public service.

Appointment and
qualifications of
Director

(2) A person is qualified for appointment as Director if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a recognized university; and
- (c) meets the requirements of leadership and integrity set out in chapter six of the Constitution.

(3) A person shall not be qualified for appointment as the Director under section (1) if such person—

- (a) is declared to be of unsound mind;
- (b) is an un-discharged bankrupt; or
- (c) has been removed from office for contravening the provisions of the Constitution or any other written law.

6. (1) The Directorate shall—

Functions of the Directorate

- (a) on the recommendation of the Committee, issue liquor licences in accordance with this Act;
- (b) advise the County Executive Committee on matters of policy relating to control and regulation of liquor;
- (c) collaborate with relevant government agencies for effective implementation of the Act;
- (d) carry out public education in collaboration with other public and private players on liquor control in the county;
- (e) facilitate citizen participation in matters related to liquor control;
- (f) enforce the provisions of this Act; and
- (g) perform any other function as may be assigned to it by the County Executive member pursuant to this Act.

(2) The Directorate shall make such regular reports to the County Executive member as the County Executive Member may from time to time determine.

7. (1) The Directorate shall have all the powers necessary for the proper performance of its functions under this Act.

Powers of the Directorate.

(2) Without prejudice to the generality of the provisions of subsection (1), the Directorate shall have power to—

- (a) enter into agreements or arrangements with any institution, association or professional organizations as the Directorate may consider appropriate in furtherance of the purpose for

which the Directorate is established;

- (b) enforce set standards regarding control and regulation of liquor;
- (c) manage, supervise, secure and administer the assets of the Directorate in such manner as best promotes the purpose for which the Directorate is established;
- (d) delegate any of its powers to any officer, employee, agent, section or committee of the Directorate; and
- (e) undertake any other activity necessary for the fulfillment of any of its functions under this Act.

8. (1) The Director shall be appointed for a term of three years and is eligible for re-appointment for one further term. Term of office.

(3) The members of the Committee appointed under section 4 (3) (b) shall serve on a part time basis.

9. The Directorate and members of the Committee shall be paid such allowances as the County Executive Committee shall, on the advice of the Salaries and Remuneration Commission, determine. Remuneration.

10. (1) The Director or a member may be removed from office for— Removal from office

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
 - (b) gross misconduct;
 - (c) incompetence or negligence of duty;
 - (d) bankruptcy;
 - (e) is found guilty of professional misconduct by the relevant professional body;
 - (f) in any particular case, failure to declare his or her interest in any matter being considered or to be considered by the board or committee; or
 - (g) absence from three consecutive meetings of the Directorate without a reasonable explanation.
- (2) The Director may be removed from office on any

of the grounds in subsection (1) by the County Executive Member;

(3) Before the Director is removed from office under subsection (2), the Director shall be given an opportunity to provide a defence against any of the allegations against him or her.

11. A person shall cease to be a member of the Directorate if that person—

Vacation of office.

- (a) resigns in writing, to the County Executive Member;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) is declared bankrupt;
- (d) is unable to perform the functions of his or her office by reason of mental or physical infirmity;
- (e) ceases to be a member of the nominating body section 6 (2); or
- (f) dies.

12. Where a vacancy occurs in the membership of the Directorate or Committee, the County Executive Member shall, appoint a new member in accordance with the provisions of this Act.

Filling of Vacancy.

13. (1) The Directorate shall in consultation with the County Executive Member establish such sub-county and other committees which shall be responsible for such functions as may be delegated to them under this Act.

Authorized officers.

(2) A Committee established under subsection (1) may comprise members of the Directorate and such other co-opted persons whose knowledge and skills may be necessary for the effective discharge of the functions of the Directorate.

(3) The Directorate may delegate to a member, an employee, a committee or agent, the exercise on any of its powers or the performance of any of the functions under this Act.

(4) A person to whom any power has been delegated in

accordance with subsection (3) shall be an authorised officer for purposes of this Act.

(5) Despite subsection (4), the following officers shall be authorized officers for purposes of this Act—

- (a) a public health officer appointed under the provisions of any law;
- (b) medical officers; and
- (c) other persons under whom any written law vests functions of the maintenance of law and order.

14. (1) The business and affairs of the Directorate shall be conducted in accordance with the First Schedule.

Meetings.

(2) Except as provided in the Schedule, the Directorate may regulate its own procedure subject to the law governing meetings and proceedings of Boards of State Corporations.

(3) The Directorate may invite any person to attend any of its meetings and to participate in its deliberations, but that person shall not vote on any matter requiring decision of the Directorate.

15. The County Public Service Board may appoint technical staff and other employees as may be necessary for the proper discharge of the functions of the Directorate under this Act, and upon such terms and conditions of service as the County Public Service Board may determine.

Employees of the Directorate.

16. No matter or thing done by a member of the Directorate or other office established under this Act shall, if the matter or thing is done in good faith while executing the functions, powers or duties conferred by this Act, render the employee or agent personally liable for any action, claim or demand whatsoever.

Protection from personal liability.

17. (1) There is established a fund to be known as Machakos County Alcoholic Drinks Control Fund.

Establishment of the Fund.

(2) The Fund shall consist of—

- (a) monies as may be appropriated by the County Assembly;
- (b) money realized from property forfeited to the

County Government under this Act;

- (c) gifts or grants from or by way of testamentary bequest by any person;
- (d) monies earned or arising from any investment of the Fund; and
- (e) all other monies which may in any manner become payable to, or vested in, the Fund.

(3) The Fund shall be used for meeting the capital and recurrent expenditure relating to—

- (a) carrying out the functions of the Directorate;
- (b) setting up sub-county and other committees;
- (c) providing rehabilitation facilities;
- (d) funding community development projects; and
- (e) funding any other matter authorized under this Act;

18. (1) The Fund shall be administered by the Director, subject to the general directions of the County Executive Member.

Administration of
the Fund.

(2) The Director shall ensure that money held in the fund, including any earnings and accruals is spent only for the purposes for which the fund is established.

(3) The Director—

- (a) may, with approval of the County Executive Member, impose conditions and restrictions on the use of the Fund;
- (b) shall prepare accounts for the fund for each financial year;
- (c) shall not later than three months after the end of each financial year, submit financial statements relating to those accounts to the Auditor-General;
- (d) shall furnish such additional information as may be required for the purpose of examination and audit by the Controller and Auditor-General; and

(e) shall present the financial statements to the county assembly.

(4) The Director shall ensure that the accounts for the fund and the annual financial statements relating to those accounts comply with the requirements of the Public Finance Management Act No. 18 of 2012 and the Public Audit Act.

(5) Every statement of account prepared under this section shall include details of the balances between the assets and liabilities of the Fund and shall indicate the financial status of the Fund as at the end of the financial year concerned.

PART III—LICENSING PROVISIONS

19. (1) A person shall not—

Control of alcoholic drinks

- (a) manufacture or otherwise produce;
- (b) sell, distribute, dispose of, or deal with any alcoholic drink;

except as provided under this Act or in accordance with a licence issued under this Act.

(2) Subsection (1) shall not apply to—

- (a) the *bona fide* administration or sale for purely medical purposes, and in accordance with any written law for the time being in force governing the administration and sale of medicine by—
 - (i) a medical practitioner;
 - (ii) a veterinary surgeon registered under the Veterinary Surgeons Act (Cap. 366); or
 - (iii) a pharmacist registered under the Pharmacy and Poisons Act (Cap. 244), of a medicine containing alcoholic drink.
- (b) the sale of spirituous or distilled perfume, or perfumery;
- (c) the sale of industrial alcohol;
- (d) the sale by auction by an auctioneer, licenced under the Auctioneers Act, 1996 (No. 5 of

1996), of an alcoholic drink in quantities not less than those authorized to be sold under a wholesale alcoholic drink licence belonging to a wholesale dealer, on the licenced premises of the dealer;

- (e) the sale by a deceased person's legal personal representative of an alcoholic drink forming part of the estate of the deceased person;
- (f) the sale by a trustee in bankruptcy of an alcoholic drink forming part of the bankrupt's estate;
- (g) the sale by the liquidator of a company of an alcoholic drink forming part of the company's assets; and
- (i) the sale of alcoholic drink to the members only of any canteen, club, institute, mess or similar institution of the disciplined forces:

(3) Subsection (2) does not apply to any canteen, club, institute, mess or similar institution operated by a person for personal profit.

20. (1) A person intending to manufacture or trade in any alcoholic drink in the County or to operate an establishment for the sale of an alcoholic drink shall make an application in a prescribed form to the Directorate specifying where the premises is to be situated and shall pay a prescribed fee.

Application for
licence

(2) The application under subsection (1) shall contain—

- (a) a comprehensive proposal on the nature, orientation and other justification for the establishment of the alcoholic plant or establishment for sale;
- (b) a disclosure as to whether the applicant has been previously convicted of an offence under this Act or any Act at any time in force relating to the manufacture, sale or consumption of an alcoholic drink, giving full particulars of the offence of which he was convicted, of the court by which he was convicted, of the date of the

conviction;

(c) certification from Kenya Bureau of Standards for a manufacturer's licence;

(c) such other matters as may be prescribed.

(3) The Director shall, within twenty-one days or such other time as he may determine, after the submission of an application for a licence, prepare a notice convening a meeting of the Committee setting forth—

(a) the names of all applicants;

(b) the types of licences applied for;

(c) the premises in respect of which the licences are applied for; and

(d) the time, date and place of the meeting, and shall forthwith cause a copy of the notice to be—

(i) published in a newspaper circulating within the county;

(ii) posted in some conspicuous place within the Directorate's offices;

(iii) sent to the county medical officer of health; and

(iv) sent to any other relevant office..

(4) The Directorate shall, within twenty-one days of receipt of the application under subsection (1)—

(a) record and serialize the applications;

(b) inspect the premises to ascertain that they are suitable with regard to the nature of the licence sought;

(c) cause a public health officer to inspect the premises to ascertain that they meet the occupational health and safety requirements the relevant laws; and

(d) ascertain or cause to be ascertained any other matter as may be by law required.

(5) An application for a licence and all other forms shall be in the form prescribed in the Second Schedule.

21. (1) Any person may lodge objection to an application with the Directorate.

Objection to an application for a licence.

(2) Every objection to an application shall be made in writing to the Director, and the objector shall, at least seven days before the hearing of the application, serve the applicant with a copy of the objection together with the grounds of the objection.

(3) The Directorate may of its own motion take notice of any matter or thing which, in the opinion of the Directorate, constitutes an objection to an application, whether or not any objection has been otherwise lodged.

(4) An objector may appear personally or by an advocate at the hearing of the application.

22. (1) At the meeting convened pursuant to section 20 (3), the Committee shall consider the application and examine the applicant to ascertain all conditions and requirements under this Act are met.

Consideration of an application.

(2) Every applicant for a licence under this Act shall appear before the Committee in person or such other manner as the Committee may permit, and shall satisfy the Committee that there is need for the grant of a licence of the type applied for in the particular locality in respect of which the application is made.

(3) Without prejudice to the generality of subsection (1) the Directorate shall, before issuance of any licence, ensure that—

- (a) the premises are suitable to the nature of the licence being sought;
- (b) the premises conform to the requirements of the occupational health and safety regulations;
- (c) the applicant possesses the infrastructure and equipment necessary to carry out the business applied for;
- (d) the applicant for a licence to brew, distil, manufacture, or bottle an alcoholic drink possesses the necessary qualifications and relevant requirements stipulated under the Standards Act or any other law.

(4) The Directorate shall maintain records of all the Committee's proceedings, and, in particular, of the purpose for which an application was made, and notes of the evidence given and of the arguments adduced and the decision of the Committee thereon.

23. (1) The Committee shall, after considering the application under section 22, indicate in writing whether it objects to the grant of the licence applied for.

Grant of a licence.

(2) Where the Committee has no objection to the application, it shall recommend to the Directorate to grant a licence to the applicant upon payment of the prescribed fee.

(3) The licence issued shall be in the prescribed and subject to such conditions as the Directorate may consider fit.

(4) Where the Committee is not satisfied with the application under subsection (1), it may—

- (a) reject the application giving reasons and notify the applicant accordingly within thirty days of the decision to reject; or
- (b) make comments and recommendations thereon and return it to the applicant within thirty days.

(5) The applicant to whom the application is returned under subsection (4) (b) may re-submit a revised application within six months of the date of notification.

(6) On receipt of any revised application under subsection (5), the Committee shall, within three months determine the application in accordance with this Act and upon such determination, if satisfied, issue a licence.

(7) Where the Directorate grants a licence under this section it shall, publish the grant in the County *Gazette*.

24. (1) Where premises are about to be constructed or reconstructed or are in course of construction or reconstruction for the purpose of being used for the sale of alcoholic drinks for consumption on such premises, any person having an interest in the premises may apply in the prescribed form to the Committee for an assurance that, on the completion of the construction or reconstruction, a licence of the type to be specified in the application will be granted in respect of such premises.

Provisional licence.

(2) The provisions of sections 20 to 23 shall apply to such applications, which shall be accompanied by a signed copy of the plans of such premises.

(3) The Directorate may, subject to such reasonable conditions as it may therein include, give to the applicant an assurance in the prescribed form that, on the completion of the premises, a licence of the type specified therein will be granted or it may refuse to give such an assurance.

(4) Where such an assurance has been given under subsection (3), the Directorate may, on any date, on being satisfied that the premises have been completed in accordance with the signed plans submitted under subsection (2) and that any conditions which may have been imposed in the assurance have been complied with, issue to the applicant a licence of the type specified in the assurance in respect of the premises.

(5) Any assurance given under subsection (3) shall become ineffective and the Directorate shall not issue a licence if, between the date of the giving the assurance and the date of completion of the premises, the applicant becomes a person ineligible to be issued with a licence under this Act.

25. (1) The Directorate shall not grant a new licence or transfer a licence to any person who has not fulfilled the requirements of this Act or any other laws.

Persons not eligible
for a licence.

(2) The Directorate may refuse to renew an existing licence only when the Directorate is satisfied that—

- (a) the licensee is not a fit and proper person to hold the licence;
- (b) the business to which the licence relates is conducted in a manner that is in breach of this Act, or any other law;
- (c) the conditions of the licence have not been satisfactorily fulfilled;
- (d) the premises to which the licence relates are not in a proper state of repair, or are not provided with proper sanitary arrangements, or do not comply with the health requirements.

Validity and
renewal of licences.

26. (1) Except as otherwise provided in this Act, the Directorate may, subject to this Part, grant, renew or transfer a licence, and may embody therein such conditions as it may deem appropriate, or it may refuse to grant, renew, transfer, withdraw or cancel a licence.

(2) Every licence and every renewal, transfer, withdrawal or cancellation thereof shall be sufficiently authenticated by the Directorate.

(3) Every grant, renewal or transfer of a licence shall—

- (a) be subject to the payment of such fee or fees as may be prescribed;
- (b) expire on 31st December each year;
- (c) specify in the licence the hours within which the sale of alcohol is permitted.

(4) Where an application for the renewal of a licence has been made and the Directorate has not by the date of expiration of the licence reached a decision thereon, such licence shall continue in force until the decision of the Directorate is made known.

(5) Where an application for a licence has been refused, or a licence has been cancelled, no subsequent application by the former applicant or licensee for a licence of the same description shall be considered by the Directorate during the period of six months from the date of such refusal or cancellation, except at the discretion of the Directorate.

27. (1) A licence issued to a body corporate shall be issued in the name of the body corporate.

Licences to body
corporate.

(2) The Committee may require prior disclosure of the directorship of the body corporate or refuse to grant a licence to the body corporate if any of the directors does not qualify to be granted the licence individually.

(3) No transfer of a licence issued to a body corporate shall be necessary on any change in the office of secretary, but any person for the time being holding such office shall be entitled to the privileges granted by, and shall be subject to the duties and liabilities imposed upon the holder of, such licence.

28. (1) The licence fees payable under this Act shall be specified in the annual County Finance Act.

Licence fees.

(2) Save as otherwise provided in subsection (4), no licence may be granted to apply in respect of more than one premise.

(3) The Directorate shall, when a licence is granted, renewed, withdrawn or cancelled, include in the licence a sufficient description of the licensed premises.

(4) A licence may be granted to apply to more than one premise, subject to such conditions as may be specified in the licence and to specification of the addresses of all such premises in the licence.

29. (1) Where a licensee sells or leases or otherwise disposes of the premises or business specified in his licence, he may apply in writing to the Directorate for the transfer of his licence to the purchaser or lessee or otherwise of such premises, and the Directorate may grant a transfer of such licence.

Transfer of licence.

(2) No further fee shall be payable in respect of a licence granted under subsection (1) if, at the date of the grant, the licence which was temporarily transferred was valid for a period of more than six months.

(3) In the event of the death, bankruptcy or unsoundness of mind of a licensee, or in any similar event to which the Directorate declares in writing that this section should be applied, it shall be lawful, for the purposes of this Act for the executor, administrator, trustee or manager, as the case may be or any other person approved by the Directorate, to carry on the business of the licensee without any transfer or grant of a licence either personally or by an agent approved by the Directorate.

(4) Every person to whom a licence may have been transferred under subsection (1), and every person permitted to carry on a business without a transfer or grant of a licence in pursuance of subsection (3), shall possess all the rights and be liable to all the duties and obligations of the original licensee.

30. (1) If the renewal of a licence is refused, the licensee shall, on payment of the proportionate part of the

Renewal of licence.