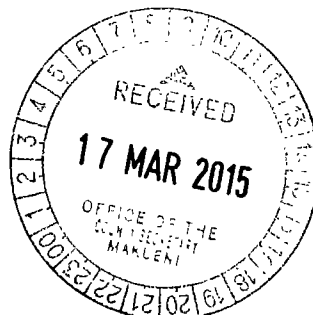


SPECIAL ISSUE

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REPUBLIC OF KENYA



MAKUENI COUNTY GAZETTE SUPPLEMENT

ACTS, 2014

NAIROBI, 2nd January, 2015

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**THE MAKUENI COUNTY ALCOHOLIC DRINKS
CONTROL ACT, 2014**

No. 3 of 2014

Date of Assent: 29th December, 2014

Date of Commencement: 2nd January, 2015

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**THE MAKUENI COUNTY ALCOHOLIC DRINKS
CONTROL ACT, 2014**

AN ACT of the County Assembly of Makueni to provide for the licensing and regulation of the production, sale, distribution, consumption and outdoor advertising, of alcoholic drinks, and for connected purposes

ENACTED by the County Assembly of Makueni as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Makueni County Alcoholic Drinks Control Act, 2014 and shall come into operation on the date of publication in the Gazette.

Short title and commencement.

2. In this Act, unless the context otherwise requires—
"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 ;

Interpretation

"alcoholic drink" includes alcohol, spirit, wine, beer, liquor, traditional alcoholic drink, and any one or more of such varieties containing one-half of one percent or more of alcohol by volume, including mixed alcoholic drinks, modified industrial alcohol blended for human consumption and every liquid or solid, patented or not, containing alcohol and capable of being consumed by a human being;

"authorised officer" means an authorised officer within the meaning of section 50;

"Authority" means the National Authority for the Campaign Against Alcohol and Drug Abuse" established under the National Authority for the Campaign Against Alcohol and Drug Abuse Act, 2012; "cinema" has the meaning assigned to it in the Films and Stage Plays Act Cap 222;

"County" means Makueni County;

"Directorate" means the Alcoholic Drinks Control Directorate established under section 4;

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

"Enforcement Committee" means the County Alcoholic Drinks Control Enforcement Coordinating Committee established under section 51;

"Executive Member" means the County Executive Member responsible for finance; "Fund" means the Alcoholic Drinks Control Fund established by section 29; "Governor" means the Governor of Makueni County; "health institution" means a hospital, nursing home, convalescent home, maternity home, health centre, dispensary or other institution where health or other medical services are rendered free of charge or upon payment of a fee; "illicit trade" means any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase of alcohol or its products, including any practice or conduct intended to facilitate such activity; "licensee" means a person who holds a licence granted under this Act; "locality" unless where context otherwise provides to the contrary, means a city, municipality, town, urban area, sub-county or ward as the case may be;

"manager" in relation to –

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

"manufacture" means the brewing, distilling, tapping or any processing or intermediate processing of an alcoholic drink and includes the packaging, labeling, distribution or importation of an alcoholic drink for sale in the county or anywhere in Kenya;

"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; "package" means the container, receptacle or wrapper in which an alcoholic drink is sold or distributed and includes the carton in which multiple packages are stored; "retailer" means a person who is engaged in a business that includes the sale of any alcoholic drink to consumers; "review committee" means the County Alcoholic Drinks Regulation Administrative Review Committee established under section 6;

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"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;

"sub county committee" means the Sub-county Alcoholic Drinks Regulations Committee appointed under section 9.

3. The object and purpose of this Act is to provide for licensing of alcoholic drinks by the County Government pursuant to Part II of the Fourth Schedule to the Constitution so as to control of the production, sale, distribution, promotion and use of alcoholic drinks and the promotion of research, treatment and rehabilitation for persons dependent on alcoholic drinks in order to —

- (a) protect the health of the individual in light of the dangers of excessive consumption of alcoholic drinks;
- (b) protect persons under the age of eighteen years from negative impact on health and social development from exposure to advertisements of alcoholic drinks
- (c) protect consumers of alcoholic drinks from misleading or deceptive inducements and inform them of the risks of excessive consumption of alcoholic drinks
- (d) inform them of the risks of excessive consumption of alcoholic drinks;
- (e) protect the health of persons under the age of eighteen years by preventing their access to alcoholic drinks;
- (f) inform and educate the residents in the county on the harmful health, economic and social consequences of the consumption of alcoholic drinks;
- (g) adopt and implement effective measures to eliminate illicit trade in alcohol including smuggling, illicit manufacturing and counterfeiting;
- (h) ensure fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks;
- (i) reduce and mitigate the negative health, social and

Object and
Purpose of the
Act.

economic impact on communities resulting from production, sale and consumptions of alcoholic drinks.

PART II—ADMINISTRATION

4. (1) There is established the Makueni County Alcoholic Drinks Control Board.

Establishment of
the Board

- (2) The functions of the Board shall be to—
- (a) Support and facilitate Sub-County Committees in carrying out their functions;
 - (b) Carry out public education on alcoholic drinks control in the County directly and in collaboration with other public or private bodies and institutions;
 - (c) facilitate citizen participation in matters related to alcoholic drinks control in accordance to framework for citizen participation established under the County Governments Act of 2012, the Urban Areas and Cities Act of 2011 or any other relevant written law;
 - (d) facilitate and promote in collaboration with other County and National Government institutions the establishment of treatment and rehabilitation facilities and programmes;
 - (e) carry out research directly or in collaboration with other institutions and serve as the repository of data and statistics related to alcoholic drinks control;
 - (f) develop in collaboration with other County and National Government departments strategies and plans for implementing this Act and control of alcohol abuse and any other relevant National legislation and coordinate and support their implementation;
 - (g) advise the executive member generally on the exercise of his powers and performance of his functions under this Act, and in particular on County policy and laws to be adopted in regard to the production, manufacture, sale and consumption of alcoholic drinks;
 - (h) in collaboration with other relevant County Departments, prepare and submit an alcoholic drinks status report bi-annually in the prescribed manner to the Executive Member which shall be transmitted to the County Executive Committee, County Assembly and the Authority;

- (i) recommend to the Executive Member and participate in the formulation of laws and regulations related to alcoholic drinks;
 - (j) monitoring and evaluating the implementation of this Act including the operations of the Sub-county Committees and advising the Executive Member on the necessary measures to be adopted;
 - (k) carry out such other roles necessary for the implementation of the objects and purpose of this Act and perform such other functions as may, from time to time, be assigned by the executive member.
- (3) The Board shall comprise of:
- (a) a chairperson appointed by the Governor, with approval of the County Assembly
 - (b) the County Director in charge of Health
 - (c) the County Commissioner or his representative (d) the County Director of enforcement
 - (e) the County Director in-charge of Finance
 - (f) the County Director in-charge of Social Services
 - (g) six persons, one from each Sub-County, appointed by the Executive Committee Member in charge of Finance through a competitive process in accordance with the prescribed rules, one of whom shall be a youth and another a representative of persons living with disability provided that not more than two persons shall be of the same gender.
 - (h) the persons appointed under paragraph (g) above shall serve for a term of three years, but shall be eligible for reappointment for one such further and final term.
- (4) The report referred to in sub section (2) (f) shall contain among others-
- (a) data on status of alcoholic drinks use and impact disaggregated in terms of age, gender, geographical location;
 - (b) impact of alcoholic drinks in the County;
 - (c) measures adopted to control and reduce negative impact of alcoholic drinks in the County;
 - (d) level of public participation in implementing the Act and feedback from residents of the county in relation to appropriate processes for mitigating impact of alcoholic drinks use;

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Makueni County Alcoholic Drinks Control

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- (e) data on use of treatment and rehabilitation services in each Ward; (f) challenges faced in implementation of the Act;
- (g) level of collaboration with other County and National Government Agencies;
- (h) any matter relevant to the implementation of the Act.

5. (1) There shall be, for every Sub-County, a Committee which shall—

Establishment of
Sub-county
Committee

- (a) issue licenses in accordance with this Act; and
- (b) perform such other functions as may, from time to time be assigned to it by the Governor.

(2) The Sub-county Committee may, in the discharge of its functions under this Act, make inspection or other visits to premises at such times as it may deem appropriate:

Provided that not more than six months shall pass before conducting an inspection on licensed premises.

(3) The Sub-county Committee shall issue an inspection report in the prescribed form for each inspection carried out.

(4) In carrying out its functions, the Sub-county Committee shall -

- (a) ensure that there is effective public participation in accordance with the framework for citizen participation established under the County Governments Act, the Urban Areas and Cities Act or any other relevant written law;
- (b) collaborate with Ward Administrators and Village Administrators and Councils appointed under the County Governments Act, 2012 and the officers in charge of coordination of National Government functions in the Wards and Villages;
- (c) collaborate with similar committees in other counties for effective implementation of the Act.

(5) The sub-county committee shall consist of —

- (a) Sub-county Administrator appointed under the County Governments Act who shall be the Chairperson;
- (b) the Sub-County Medical Officer for health;
- (c) A representative of the Education sector
- (d) The Sub-county Social Services Officer

- (e) one officer designated by the Board who shall be the Secretary who shall be an ex officio member;
 - (f) the officer responsible for coordination of National Government functions in the Sub- county;
 - (g) Sub county Revenue Officer
 - (h) one person from each ward in the sub-county, appointed by the Executive Member through a competitive process in accordance with the prescribed rules, one of whom shall be a youth and another to be a representative of persons with disabilities provided that not more than three persons shall be of the same gender.
- (6) The Authorized Officers specified under section 50 or any person designated by the Authority shall attend the meetings of the Sub-county Committee in an ex-officio capacity.
- (7) An officer who is a member of the Sub-county Committee under sub-section (1) may be represented to the committee meetings by another officer who shall not be below the rank of the deputy to the officer being represented.
- (8) A person shall not be a member of the Sub-county Committee if such person is-
- (a) the holder of or a licence in the County under this Act;
 - (b) a partner in a firm or director or shareholder of a company or other body which is the holder of a licence in that county under this Act;
 - (c) directly or indirectly employed as an agent of a person, firm or company which is the holder of a licence in the County under this Act;
 - (d) undischarged bankrupt
 - (e) person who has been convicted of an offence under this Act or a felony
- (9) The conduct of business and affairs of the sub- county committee shall be in such manner as may be prescribed
- (10) The Directorate shall provide secretariat services for Sub-county Committees
- 6. (1)** There is established the County Alcoholic Drinks Regulations Administrative Review Committee made up of six persons appointed by the Governor, with approval of the County Assembly”, one from each Sub-County.
- (2) The Review Committee shall be responsible for reviewing on appeal decisions made by a sub-county Committee.

(3) The conduct of business and affairs of the Review Committee shall be in such manner as may be prescribed.

(4) The Board shall provide administrative services to the Review Committee.

PART III—LICENSING

7. (1) No person shall—

(a) manufacture or otherwise produce;

(b) sell, distribute or dispose of, or deal with any alcoholic drink in the County except under and in accordance with a licence issued under this Act.

(2) Any person who contravenes the provisions of subsection (1) commits an offence.

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

(a) the importation of alcoholic drinks into the Country if the alcoholic drink has been imported to the Country pursuant to an import license issued by the Authority;

(b) 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 a medical practitioner, a veterinary surgeon registered under the Veterinary Surgeons Act or a pharmacist registered under the Pharmacy and Poisons Act, of a medicine containing alcoholic drink;

(c) the sale of spirituous or distilled perfume, or perfumery;

(d) the sale of industrial alcohol;

(e) the sale by auction by an auctioneer, licensed under the Auctioneers Act, 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 licensed premises of the dealer;

(f) the sale by a deceased person's legal personal representative of an alcoholic drink forming part of the estate of the deceased person;

(g) the sale by a trustee in bankruptcy of an alcoholic drink forming part of the bankrupt's estate;

(h) the sale by the liquidator of a company of an alcoholic drink forming part of the company's assets;

Control of
Alcoholic
Drinks.

- (i) the sale of alcoholic drink at Parliament or the County Assembly Buildings, if sold with the permission of the Speaker of the respective Assembly;
- (j) the sale of alcoholic drink to the members only of any canteen, club, institute, mess or similar institution of the disciplined forces for reasons other than for personal profit:

8. (1) A person intending to produce, manufacture, distribute 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 Sub-County Committee in the Sub-County where the premise is to be situated and shall pay a prescribed fee.

Application
Licence

- (2) The application under subsection (1) shall contain—
 - (a) a comprehensive information on the nature, orientation and other justification for the establishment of the manufacturing plant or establishment for sale;
 - (b) an indication as to whether the manufacture or sale of the alcoholic drink is licensed in another County and if so the evidence of such licensing;
 - (c) for a manufacturer's licence, certification from Kenya Bureau of Standards;
 - (d) such other matters as may be prescribed. (3) The Sub-County Committee shall, within twenty-one days after the submission of application for a licence, prepare a notice setting forth the names of all applicants, the types of licences applied for, the premises in respect of which the licences are applied for and the time, date and place of the meeting, and shall forthwith cause a copy of the notice to be—
 - (a) published at the office of the Sub-county administrator for a period of not less than twenty- one consecutive days;
 - (b) posted in some conspicuous place at or near the applicant's premises;
 - (c) sent to the County Commissioner;
 - (d) sent to the Sub-County public health officer in the Sub-County in which the premises in respect of which the licences are applied for are situated; and
 - (e) sent to the sub-county physical planning officer.

(4) The Sub-County Public Health Officer; and the Sub-County Physical Planning Officer shall, before the hearing of any application under this section, report as fully as possible to the Sub-county Committee on all matters which may be relevant to the consideration of the application.

(5) The Inspector -General of Police or, as the case may be, the police officer appointed by him shall submit a report to the sub-county Committee on any matter relevant to the application if in his opinion the applicant should not be granted a license.

(6) Any person may lodge objection to an application.

(7) Every objection to an application shall be made in writing to the Secretary to the Sub-county Committee, and the objector shall serve notice of the grounds of the objection on the applicant, personally or by post, at least seven days before the hearing of the application and the onus of proof of such service shall be on the objector.

(8) A Sub-county Committee may of its own motion take notice of any matter or thing which, in the opinion of the Committee, constitutes an objection to an application, whether or not any objection has been otherwise lodged.

(9) Where in respect of an application a Sub-county Committee acts in pursuance of subsection (7), the Committee shall inform the applicant of the nature of the objection, and shall, if the applicant so requests, adjourn the hearing for such period, not being less than seven days, as the Sub-county Committee considers necessary to enable the applicant to reply thereto.

(10) Every person making an application shall, save as otherwise provided, appear in person or by an advocate before the Sub-county Committee, and shall satisfy the Sub-county 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.

(11) A Sub-county Committee may require the personal appearance before it of the applicant, or of the manager of the premises to which the application relates, or of both of them and of any other person whose attendance is considered by the committee to be necessary.

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

(13) A Sub-county may authorize, in writing, any person to appear before any Sub-county Committee having jurisdiction

in any part of the area within the jurisdiction of the local authority for the purpose of representing the inhabitants of that part in respect of any objection lodged to an application.

(14) Where a Sub-county Committee considers it necessary to take evidence respecting any question to be determined by the court, such evidence shall be given on oath, and the chairman shall be empowered to administer oaths.

(15) For the purposes of Chapter XI of the Penal Code (which concerns offences relating to the administration of justice), all proceedings before a Sub-county committee shall be deemed to be judicial proceedings.

(16) Every Sub-county Committee shall maintain records of all its 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 court thereon:

Provided that no decision shall be quashed on appeal solely by reason of any omission or error in such record, unless it appears that a substantial miscarriage of justice has thereby been occasioned.

(17) The Sub-county Committee shall, within twenty-one days of receipt of the application under subsection (1), record the application and assess the same on the basis of the objections received if any and the interests of the sub-county, and shall ensure that-

- (a) the available premises are suitable with regard to the nature of the licence being sought;
- (b) the premises conform to the prescribed 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, distill, bottle or manufacture an alcoholic drink possesses necessary qualifications and relevant requirements stipulated under Standards Act or any other relevant law; and
- (e) the premises has sufficient number of competent staff in line with such norms as may be prescribed.

9. (1) The Sub-County Committee shall, after considering the application under section 11, indicate in writing whether it objects to the grant of licence to the applicant upon payment of the prescribed fee.

(2) Where the Sub-county Committee has no objection to the application under section 11, it shall grant a licence to the applicant upon payment of the prescribed fee.

(3) The licence issued shall be in such form as may be prescribed and subject to such conditions as the Sub-county Committee may consider fit.

(4) Where the Sub-county 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 fourteen days.

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

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

(7) Where the Sub-County Committee grants a licence under this section it shall, publish the grant in the ward administrator's office.

10. (1) Despite the provisions of sections 11 and 12, the Sub-county Committee may issue a provisional license for the manufacture or sale of an alcoholic drink for such period not exceeding six months as may be appropriate where the Committee is satisfied that the applicant for the license has demonstrated to the satisfaction of the Committee that the manufacture or sale of the alcoholic drink is licensed in another county but the issuance of the provisional license shall be subject to the applicant complying with the provisions of sections 11 and 12 within the period of the provisional licence.

Provisional Licence.

(2) 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 Sub-county 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.

(3) The provisions of section 11 and 12 shall apply to such applications, which shall be accompanied by a signed copy of the plans of such premises.

(4) The Sub-county committee 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.

11. (1) The Sub-County Committee shall not grant a new licence for the sale of an alcoholic drink to be consumed on the premises unless the Sub-County Committee is satisfied—

Licence for
Premises.

- (a) that it would be in the public interest for provision to be made for the sale of alcoholic drink for consumption on the premises in the particular locality in respect of which the application is made, and that the number of such premises in respect of which such licences have already been granted is insufficient for the requirement of the locality given the population density per square kilometre and the permitted maximum number of such premises as shall be maximum number of such premises as shall be;

Provided that no licence shall be granted to sell alcoholic drinks in any institution of basic education including primary and secondary schools or any residential area or premises as have been demarcated by or under the relevant written laws;

- (b) that the premises in respect of which the application is made are in good repair and are in a clean and wholesome condition, and are provided with adequate and proper sanitary arrangements;
- (c) that the premises in respect of which the application is made are located at least three hundred metres from any Nursery, Primary, Secondary or other learning institutions for persons under the age of eighteen years.

(2) The Sub-County Committee shall not grant a licence for the sale of an alcoholic drink in —

- (a) a supermarket or such other related retail chain store unless it is satisfied that the applicant has taken measures to ensure that the area in which the sale is to take place is not accessible to persons under the age of eighteen years;

- (b) in an outlet or premises located within a fuel station or a fast food restaurant.

(3) Despite subsection (1), the Sub-county Committee may issue a licence to a premise located within three hundred metres of any nursery, primary, secondary or other learning institution for persons under the age of eighteen years only if -

- (a) the premises do not share a wall with the institution and are sealed off by a physical and non-transparent barrier that ensures zero visibility of the premise from the locality of the institution;
- (b) the premises displays on its outside any of the prescribed health messages in a clear and visible manner;
- (c) the premises do not bear any outdoor alcoholic drinks promotion or advertisement;
- (d) the applicant does not engage in activities that interfere with learning in the institution or activities that calculated to attract persons under the age of eighteen to the premises;

12. (1) The Sub-County Committee shall not grant a new licence or transfer a licence to any person who—

- (a) has failed to satisfy the Sub-County Committee, if called upon to do so, of his good character and standing in relation to the expectations in this Act;
- or
- (b) has been convicted of an offence under this Act or of any offence of which the sentence is imprisonment without the option of a fine in Kenya or elsewhere for a period in excess of six months; or
- (c) in the case of a retail licence, is not resident in Kenya; or
- (d) is under eighteen years of age; or (e) is an undischarged bankrupt.

(2) The Sub-County Committee may refuse to renew an existing licence only when the Sub-County Committee is satisfied that—

- (a) the licensee is not a fit and proper person to hold the licence; or
- (b) the licensee has been convicted of an offence under this Act or any Act at any time in force regulating the

Persons Not
Eligible for
Licence.

manufacture, distillation, distribution sale of an alcoholic drink for more than three times within one year; or

- (c) has been convicted of an offence and sentenced to imprisonment without the option of a fine in Kenya or elsewhere for a period in excess of six months; or (d) the business to which the licence relates is conducted in a manner that is in breach of this Act, or any other rules and regulations for the time being in effect, or conditions set by the Sub-county Committee ; or
- (e) the conditions of the licence have not been satisfactorily fulfilled; or
- (f) 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 reasonable requirements of the Sub-county public health officer and the owner of the premises or the licensee refuses or is unable to give satisfactory guarantees that the necessary repairs will be carried out, or due compliance effected, as the case may be, within a time specified by the Sub-county Committee.

13. (1) Except as otherwise provided in this Act, a Sub-County Committee may, subject to this Part, grant, renew, transfer or remove 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.

Validity and
Renewal of
Licence.

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

(3) Every grant of a licence or its every renewal or transfer shall-

- (a) be subject to the payment of such fee or fees as may be prescribed;
- (b) expire on thirty first day of December each year;
- (c) specify in the licence the hours stipulated under the First Schedule and as national legislation may provide within which the sale of alcohol is permitted and any other relevant condition.

(4) Where an application for the renewal of a licence has been made and the Sub-County Committee 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 Sub-County Committee is made known.