

SPECIAL ISSUE

Kenya Gazette Supplement No. 8 (Tana River County Acts No. 5)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

TANA RIVER COUNTY ACTS, 2017

NAIROBI, 16th October, 2017

CONTENT

Act—	PAGE
The Tana River County Trade Licencing Act, 2017	1

THE TANA RIVER COUNTY TRADE LICENCING ACT, 2017

No. 5 of 2017

Date of Assent: 20th June, 2017

Date of Commencement: See Section 1

ARRANGEMENT OF SECTIONS

PART I — PRELIMINARY

Section

- 1—Short title and commencement.
- 2—Interpretation.
- 3—Object of the Act.
- 4—Application.
- 5—Guiding principles.

PART II — REGULATION OF BUSINESS

- 6—Declaration of a trading centre.
- 7—Declaration of business areas and trading centers.
- 8—Declaration of specified goods.
- 9—Restrictions on carrying on business.
- 10—Trading prohibited without a trading licence.

PART III — LICENCING OF BUSINESSES OTHER THAN THOSE PROVIDING PROFESSIONAL AND CONSULTANCY SERVICES

- 11—Directorate of Trade.
- 12—Committees.
- 13—Director of Trade.
- 14—Deputy Director and other officers.
- 15—Licencing officers.
- 16—Functions of the Directorate
- 17—Power to undertake inspections.
- 18—Confidential information.
- 19—Divisions of the Directorate.
- 20—Reports.

- 21—Application for trading licence.
- 22—Grant of trading licence.
- 23—Disqualification for holding a trading licence.
- 24—Duration of trading licence.
- 25—Exhibition of trading licence.
- 26—Inspection of trading licence.

PART IV— HAWKERS LICENCE

- 27—Grant of hawker's licence.
- 28—Duration of hawkers licence.
- 29—Hawkers licence not transferable.
- 30—Production of hawkers licence on demand.

PART V — TRAVELLING WHOLESALERS LICENCE

- 31—Travelling wholesalers licence.
- 32—Duration of travelling wholesalers licence.
- 33—Travelling wholesaler's servant.
- 34—Production of travelling wholesalers licence on demand.

PART VI — MISCELLANEOUS AND GENERAL PROVISIONS

- 35—Issue of duplicate licence.
- 36—Transfer of licence.
- 37—Books of account.
- 38—Endorsement and revocation of licence.
- 39—General penalty.
- 40—Regulations.
- 41—Licence fees.
- 42—Exemption.
- 43—Licences required under other Acts.

**THE TANA RIVER COUNTY TRADE LICENCING
ACT, 2017**

AN ACT of the County Assembly of Tana River to provide for the general administrative and legal framework for issuance and licencing of trade in the County, for empowering the County Assembly and County Executive Committee member to make certain variations in relation to trade licencing and for related purposes

ENACTED by the County Assembly of Tana River, as follows—

PART I — PRELIMINARY

1. This Act may be cited as the Tana River County Trade Licencing Act, 2017 and shall come into operation upon publication in the *Gazette*.

Short title and commencement.

2. In this Act, unless the context otherwise requires—
“business” means a concern carrying on the occupation of—

Interpretation.

- (a) a regulated trade;
- (b) importing or exporting goods;
- (c) commission agent or indent agent;
- (d) manufacturer's representatives;
- (e) produce dealer or produce broker;
- (f) business broker or management consultant;
- (g) insurance agent;
- (h) estate agent; or
- (i) any other occupation, whether similar to any of the foregoing or not, which the County Executive Committee Member may, by order, declare to be an occupation for the purposes of this definition;

“business transaction” means a transaction entered into with a business being a transaction connected with the occupation carried on by the concern which constitutes the business;

“County Executive Committee member” means the County Executive Committee member responsible for Trade;

“commission agent” means a factor employed by his or her principal to sell goods delivered to the factor, for remuneration called commission;

“conditional licence” means a licence granted under section 8;

“general business area” means an area within the County declared under section 7 to be a general business area for the purposes of this Act;

“hawker” means a person who, whether on his or her own account or as the servant of another person, sells goods by retail other than in trading premises or in a market established under the Markets Act;

“licence” means a licence, other than a conditional licence, granted under this Act;

“licencee” means holder of a licence;

“licencing officer” means a person appointed to be a licencing officer under section 15;

“licencing authority” means the County Executive Committee member, Directorate or any other body or person designated, by notice in the *Gazette*, by the County Executive Committee member;

“manufacturer's representative” means a person resident in Kenya in the year in question who acts as an agent for a manufacturing or trading concern and receives remuneration from the concern on a retainer basis or on the basis of the orders which he obtains in Kenya, or both;

“regulated trade” means—

- (a) wholesale or retail trade;
- (b) catering;
- (c) laundering or dry-cleaning;
- (d) hairdressing;
- (e) beauty culture;
- (f) shoe repairing;
- (g) motor vehicle repairing;
- (h) cinematograph film exhibition;
- (i) advertising; or
- (j) the sale by a manufacturer of goods manufactured by him or her;

“specified goods” means any goods, or goods of any particular class, declared as such under section 8 for the purposes of this Act.

“owner” includes occupier;

“prescribed” means prescribed by regulations made by the County Executive Committee member under this Act;

“sell”, with its grammatical variants and cognate expressions, includes to offer for sale and to expose for sale and their grammatical variants and cognate expressions;

“sell goods wholesale” means to sell goods to a person or the servant of the person who is reasonably believed by the seller to intend to resell the goods by retail;

“trade” or “trading” means the selling of goods for which a licence under this Act is required, in any trading premises, whether by retail or wholesale;

“trading premises” includes any structure attached to the land, whether of a permanent or temporary nature, except a market established under the Markets Act, in which trade is carried on;

“travelling wholesaler” means a person who, whether on his or her own account or as the servant of another person, sells goods by wholesale other than in trading premises.

(2) For the purposes of this Act, a person conducts a business—

- (i) as the owner or a part-owner of the business; or
- (ii) if that person has a controlling interest or partly controls the business.

3. The purpose and object of this Act is to provide for a framework for the County Government to—

Object of this Act.

- (a) regulate trade activities in the County;
- (b) to licence trade activities;
- (c) to provide for categories and various classes of trade and provide for their respective licencing;
- (d) to ensure that there is a clear and transparent process of determining the fees and charges to be paid.

4. (1) This Act applies to all trade activities within the County.

Application.

(2) Unless otherwise provided for under this Act, all persons undertaking trade in the County must obtain a licence in accordance with this Act.

5. The County Executive Committee member, any public or State officer charged with any responsibility under this Act shall, in the conduct of his or her responsibility, comply with, respect and uphold the values and principles enshrined in the Constitution.

Guiding principles.

PART II —REGULATION OF BUSINESS

6. (1) The County Executive Committee member may, by notice in the *Gazette*—

Declaration of a trading centre.

- (a) declare any specified area in Tana River County to be a trading centre for the purposes of this Act;
- (b) assign a name to the trading centre;
- (c) define the boundaries of the trading centre;
- (d) alter the boundaries of any trading centre;
- (e) declare that any trading centre shall cease to be a trading centre.

(2) Any trading centre declared by an administration of a district before the coming into operation of this Act which has not ceased to be a trading centre shall be deemed to be a trading centre for the purposes of this Act.

(3) Subject to subsection (4), a person shall not erect any shop or carry on any trade in a shop in any area within a radius of two miles outside the boundary of any trading centre.

(4) The provisions of subsection (3) shall not apply to any shop or store which at the commencement of this Act is situated in any area within a radius of two miles outside the boundary of any trading centre.

(5) For the avoidance of doubt, it is declared that, notwithstanding any other provision in any written law to the contrary, on and after the coming into force of this Act, the power to declare any area of Tana River county to be a trading centre shall be exercised only by the County Executive Committee member.

7. The County Executive Committee member may, from time to time, by notice in the *Gazette*, declare any area of the County or town or any part of that area to be a general business area for the purposes of this Act.

Declaration of business areas and trading centers.

8. The County Executive Committee member may, from time to time, by notice in the *Gazette*, declare any particular goods or goods of any particular class to be specified goods for the purposes of this Act.

Declaration of specified goods.

9. (1) A person shall not conduct any business, except under and in accordance with the terms of a current licence issued under this Act.

Restrictions on carrying on business.

(2) A person shall not conduct a business—

(a) in any place which is not a general business area; or

(b) in any specified goods,

unless his or her licence specifically authorises that person to do so.

(3) A licensee shall not enter into any business transaction unless the business with which the transaction is entered into is carried on under a licence.

(4) Any person who contravenes subsection (1), (2) or (3) commits an offence and shall be liable, upon conviction to imprisonment for a term of one year or to a fine not exceeding two hundred thousand shillings or to both.

(5) Where a person is convicted of an offence under this section, the County Executive Committee member may in writing order—

(a) where that person is the holder of a licence, the revocation of his or her licence;

(b) in any case that no licence shall be granted to that person during such period (not exceeding two years) as the County Executive Committee Member may deem fit.

10. (1) Subject to subsection (2), a person shall not trade in any goods or carry on any business unless he or she is in possession of a trading licence granted for that purpose under this Act.

Trading prohibited without a trading licence.

- (2) A trading licence shall not be required for—
- (a) the trade of a planter, farmer, gardener, dairyperson or agriculturist in respect of the sale of his or her own dairy or agricultural produce;
 - (b) the trade of a person in respect of goods bona fide made by him or her or by his or her handicraft in or on any premises where he or she normally resides, or by the handicraft of persons normally residing with him or her or who are his or her employees or members of his or her family;
 - (c) the trade carried on in any market established under the Markets Act;
 - (d) the sale of tobacco, cigarettes, newspapers, books, non-intoxicating liquor or playing cards by the management of a proprietary or members club to its members in the club premises;
 - (e) any other trade which the County Executive Committee member may, by notice in the *Gazette*, declare to be a trade for which no trading licence is required under this Act; or
 - (f) any trade or business in respect of which a separate licence is required by or under any written law.

PART III — LICENCING OF BUSINESSES OTHER THAN THOSE PROVIDING PROFESSIONAL AND CONSULTANCY SERVICES

11. (1) There is established by the County Executive Committee member a Directorate of Trade and Markets under the department responsible for Trade.

Directorate of Trade.

- (2) The Directorate shall be responsible to the County Executive Committee member for the—
- (a) regulation of trade in the County;
 - (b) facilitation of carrying out of business in the County;
 - (c) facilitation of fair trade in the County;
 - (d) facilitation of competitive and innovative industry and services sector in the County that contribute to inclusive growth and employment generation.

- (3) The Directorate shall —
- (a) endeavor to improve the business environment, increase productivity and efficiency, and enhance consumer welfare;
 - (b) improve County's competitiveness;
 - (c) increase the level of awareness of consumers on their rights and responsibilities;
 - (d) expand exports, increase investments, develop and promote micro and small and medium enterprises and enhance consumer welfare and protection;
 - (e) execute any directives and orders in relation to trade and commerce in the County;
 - (f) advice the County Executive Committee member on any matter touching on their functions;
 - (g) carry out any function assigned to it by the County Executive Committee member and legislation.

12. (1) For the effective discharge of the functions assigned to the Directorate under this Act, the County Executive Committee Member may establish such committees as he or she may consider necessary.

Committees.

(2) Without prejudice to subsection (1), there is established a market committee which shall consist of—

- (a) the Market Administrator, who shall be the Chairperson of the Market Committee; and
 - (b) two persons to be elected by the market traders who shall be of opposite gender.
- (3) The Market Committee shall—
- (a) provide assistance in market management;
 - (b) supervise sanitation work in the market;
 - (c) ensure maintenance of markets;
 - (d) provide for strategic approach to develop trade in the County;
 - (e) advice the County Government on all matters pertaining to trade in the County; and

- (f) perform such other functions as may be assigned to it in writing by the County Executive Committee member.

13. (1) The Directorate shall be headed by a Director of trade and markets.

Director of Trade.

(2) The Director shall be appointed by the County Public Service Board on such terms and conditions of service as the County Public Service Board may determine.

(3) A person shall qualify to be appointed as the Director if he or she—

- (a) is a citizen of Kenya;
- (b) meets the requirements of Chapter Six of the Constitution;
- (c) holds a degree from a recognised university in Kenya;
- (d) has at least five years experience at management level; and
- (e) has proven relevant experience in any of the following fields—
 - (i) commerce;
 - (ii) business;
 - (iii) economics;
 - (iv) law; or
 - (v) any other related field.

14. (1) The County Public Service Board may appoint such deputies and other staff of the Directorate as may be necessary for the effective functioning of the Directorate.

Deputy Director and other officers.

(2) In recruiting and appointing deputy Directors and other staff of the Directorate the County Public Service Board shall take into consideration the values and principles of public service enshrined in the Constitution.

15. (1) The County Public Service Board shall upon request by the County Executive Committee member, appoint such licencing officers as shall be necessary for the effective implementation of this Act.

Licencing officers.

(2) The office of licencing officer shall be an office in the County public service.

16. The Directorate shall—

- (a) advise the County Executive Committee member on all matters affecting the development of county trading relationships with other counties;
- (b) represent, when appropriate and considered necessary by the County Executive Committee member, the county at meetings, conferences or similar gatherings where matters of trade affecting the county are discussed or considered;
- (c) encourage and assist in the promotion of the county's produce and products, either on its own or in cooperation with any organisation involved in exporting, including exhibiting at trade fairs;
- (d) advice on the commodities pricing and marketing information within the County;
- (e) facilitate the obtaining of funds for the purpose of trade development and promotion, including discussion and negotiation with donors;
- (f) advise the County Executive Committee member on all matters affecting the growth and development of industry, commerce and trade in the county;
- (g) advise the County Executive Committee member, on the criteria for the development of industry and commerce to be applied in evaluating approvals under any legislation which promotes trade, for the time being in force in the county;
- (h) advice the County Executive Committee member on laws relating to fair trading and consumer protection;
- (i) promote the development of small businesses, disseminate knowledge of sound business and commercial practice to the county;
- (j) undertake research into any aspect of county trade, commerce and industry, including the conducting of surveys, gathering statistics and publishing reports from time to time;
- (k) evaluate investment proposals suitable for funding by the Government or donors; and

- (1) to otherwise act in the promotion of investment in the county.

17. (1) An officer appointed and authorised under this Act shall have the power to inspect any premises or place in which that officer reasonably believes to be maintained in contravention of the provisions of this Act.

Power to undertake inspections.

(2) Before starting to inspect or search the premises, an inspector who is not a member of the police force shall identify themselves to the occupier of the premises by producing their identity card for inspection by the occupier.

(3) An officer may, at any reasonable time, enter any place that he or she believes on reasonable grounds to be a place where goods are being, or have been manufactured, prepared or supplied or that is a place where services are supplied or arranged, and may—

- (a) inspect any goods or partly manufactured goods and make such other inspections as he or she considers to be necessary;
- (b) take any goods or partly manufactured goods for which he or she pays a fair price;
- (c) take a sample of anything from which goods are manufactured or produced at that place;
- (d) make inquiries of any person employed at that place or who has responsibility over that place; or
- (e) inspect and take copies of records required to be kept under this Act or any other law regulating or applying to the business being conducted at that place.

(4) Without derogating from any power conferred by subsection (3), the Directorate may require the production of any accounting documents, returns, inventories or other information whether or not relating to the business of any manufacturer or trader if such information is considered necessary for the discharge of any power or function vested in the directorate.

18. (1) An officer who divulges confidential information obtained during the course of an investigation conducted under this Act or any other law commits an offence.

Confidential information.

(2) This section does not apply to information that is—

- (a) given as evidence in proceedings taken under this Act or any law relating to consumer protection;
- (b) given by the officer as part of a report prepared for the purpose of an investigation; or
- (c) a matter of public record or is otherwise in the public domain.

(3) Any person who commits an offence under this section is liable on conviction to a fine not exceeding fifty thousand shillings or to a term of imprisonment not exceeding six months, or both.

19. (1) There shall be, within the Directorate, such Divisions as may be required for the effective performance of the functions of the Directorate.

Divisions of the Directorate

(2) The Directorate shall ensure access to its services in all parts of the County.

20. (1) The Directorate shall, within three months after the end of each financial year, or within such longer period as the County Executive Committee member may, in special circumstances allow, cause to be made and transmitted to the County Executive Committee member a report dealing generally with the activities of the Directorate during the preceding financial year.

Reports.

(2) The Director may from time to time furnish to the County Executive Committee member a report relating to any particular matter or matters investigated, or being investigated which, in the opinion of the Director, require the special attention of the Governor.

(3) The County Executive Committee member shall cause a copy of a report submitted under this Section to be laid before the County Assembly.

21. (1) An application for a trading licence shall be made to the Directorate in such form as may be prescribed.

Application for trading licence.

(2) Any person who makes any statement in his or her application for a trading licence which is to his or her knowledge untrue commits an offence and is liable on conviction to a fine not exceeding five thousand shillings or to a term of imprisonment not exceeding twelve months or both.

(3) Where a person is convicted of an offence under this Section, the court before which he or she is convicted may, in addition to any penalty that it may impose, order that the trading licence of that person be revoked or that the person be disqualified from holding any trading licence under this Act for such period as the court may specify in the order.

22. (1) Subject to this Act, the Directorate may, on application made to it in the prescribed manner and on payment of the appropriate fee, grant to the applicant a trading licence.

Grant of trading licence.

(2) A trading licence shall—

- (a) be in the prescribed form;
- (b) be granted subject to such conditions as may be prescribed; and
- (c) specify the premises in respect of which it is granted.

(3) The Directorate may refuse to grant a trading licence under this Section and shall state in writing the reason for the refusal, and may revoke any licence granted under this section if it is satisfied that any of the terms and conditions upon which the licence was granted has been contravened.

(4) Any applicant who is aggrieved by the refusal of the licencing authority to grant him or her a trading licence may appeal to the County Executive Committee member whose decision shall be final.

23. The Directorate shall not issue a trading licence to any person—

Disqualification for holding a trading licence.

- (a) who is disqualified from holding a trading licence under an order made by the court under section 38;
- (b) who has not attained the apparent age of eighteen years unless that person undertakes, to the satisfaction of the licencing authority, to trade in partnership with one or more persons all of whom have attained the apparent age of eighteen years; or

- (c) if the granting of the licence contravenes any other provision of any written law.

24. Unless earlier revoked, a trading licence granted under this Act in respect of any year shall expire on the thirty first day of December of that year.

Duration of trading licence.

25. Every holder of a trading licence shall keep his or her licence exhibited in a conspicuous place of his or her trading premises.

Exhibition of trading licence.

26. Any administrative officer, police officer, or any person authorised in writing by the Directorate, may at all reasonable times enter—

Inspection of trading licence.

- (a) any trading premises in respect of which a trading licence has been granted for the purpose of inspecting the trading licence and of satisfying himself or herself that the provisions of this Act are being complied with; or
- (b) any premises in respect of which a trading licence has not been granted under this Act but in which he or she has reasonable grounds to believe there is carried on a trade for which a trading licence is required under this Act; and
- (c) may require the owner of the premises to furnish him or her with any information he or she may deem necessary.

(2) The owner of any premises to which subsection (1) applies shall provide all necessary assistance and furnish all necessary information as any administrative officer, police officer, licencing authority or a person authorized in writing by the licencing authority may deem necessary for the discharge of his or her duties under that subsection.

(3) Any person who obstructs or hinders, or knowingly makes a false declaration or gives any false information to any administrative officer, police officer, the Directorate or a person authorised in writing by the Directorate in the performance of his or her duties under subsection (1) commits an offence and is liable on conviction to a fine not exceeding two thousand shillings or to a term of imprisonment not exceeding six months or both.

PART IV —HAWKER'S LICENCE

27. (1) A person shall not act as a hawker unless he or she is in possession of a valid hawker's licence granted to him or her for that purpose by the Directorate.

Grant of hawker's licence.

(2) A licencing authority may, on application made to it in the prescribed manner and on payment of the appropriate fee, grant to the applicant a hawker's licence.

(3) A hawker's licence shall be in such form as may be prescribed and shall be granted subject to such conditions as to—

- (a) the kind of goods which may be hawked;
- (b) the area within which the hawking shall be restricted;
- (c) the hours during which the goods may be hawked; and
- (d) such other conditions as the licencing authority may think fit to impose.

(4) Where any person employs a servant to hawk goods on his or her behalf, he or she shall take out, in his or her own name, a licence to be carried by the servant when so employed and where it is desired that more servants than one shall be so employed, an additional licence shall be taken out in respect of each additional servant.

(5) Subject to subsection (6), no hawkers licence shall be required in respect of any person who acts as a hawker of—

- (a) fish, poultry, vegetables, eggs, fruit, victuals, firewood or newspapers;
- (b) any goods bona fide made by his or her handicraft in or on any premises where he or she normally resides or by the handicraft of persons residing with him or her or who are his or her employees or members of his or her family;
- (c) any other goods which the County Executive Committee member may, by order in the *Gazette*, declare to be goods which may be hawked without a hawkers licence under this Act.
- (6) The Directorate may refuse to grant a hawkers

licence under this Section and shall state in writing the reason for the refusal, and may revoke any hawkers licence granted under this section if it is satisfied that any of the terms and conditions upon which the hawker's licence was granted has been contravened.

(7) Any applicant who is aggrieved by the refusal of the licencing authority to grant him or her hawker's licence may appeal to the County Executive Committee member whose decision shall be final.

28. Unless earlier revoked, a hawker's licence granted under this Act in respect of any year shall expire on the thirty first day of December of that year.

Duration of hawkers licence.

29. A hawker's licence granted under this Act shall be personal to the holder of the licence and shall not be transferable.

Hawkers licence not transferable.

30. Every person who holds a hawkers licence granted to him or her under this Act shall carry his or her licence with him or her at all times while he or she is acting as a hawker, and shall produce the licence for inspection on demand; by any administrative officer, police officer or any person authorized in writing by the Directorate.

Production of hawkers licence on demand.

PART V—TRAVELLING WHOLESALERS LICENCE

31. (1) A person shall not act as a travelling wholesaler unless he or she is in possession of a travelling wholesaler's licence granted to him or her for that purpose under this Act.

Travelling wholesalers licence.

(2) For the purpose of granting a travelling wholesalers licence, the licencing authority shall be such person as the County Executive Committee member may, by notice in the *Gazette*, appoint.

(3) The licencing authority may, on application made to it in the prescribed manner and on payment of the appropriate fee, grant to the applicant a travelling wholesalers licence.

(4) A travelling wholesaler's licence shall be in such form as may be prescribed and shall be granted subject to such conditions as the licencing authority may deem fit to impose.

(5) In addition to any condition which the licencing authority may impose under subsection (4), every travelling wholesaler's licence shall be subject to the condition that the holder of the licence shall not sell, or permit the sale of, goods by retail.

(6) The licencing authority may issue a travelling wholesalers licence either generally, or in respect of any part of County.

(7) A travelling wholesaler's licence granted under this Act shall be personal to the holder of the licence and shall not be transferable.

(8) The licencing authority may—

- (a) refuse to grant a travelling wholesalers licence under this Section; and
- (b) revoke any travelling wholesalers licence granted under this Section if it is satisfied that any of the terms and conditions upon which the travelling wholesalers licence was granted has been contravened.

(9) Any applicant who is aggrieved by the refusal of the licencing authority to grant him or her travelling wholesaler's licence may appeal to the County Executive Committee member whose decision shall be final.

32. Unless earlier revoked, a travelling wholesalers licence granted in respect of any year shall expire on the thirty first day of December of that year.

Duration of travelling wholesalers licence.

33. Where a person holding a travelling wholesalers licence employs a servant to act as a travelling wholesaler on his or her behalf, he or she shall take out, in his or her own name, a licence to be carried by the servant when acting as a travelling wholesaler and, where more than one servant is employed, an additional licence shall be taken out in respect of each additional servant.

Travelling wholesaler's servant.

34. Every person who holds a travelling wholesalers licence, including every servant of that person, shall carry his or her licence with him or her at all times while he or she is acting as a travelling wholesaler, and shall produce the licence for inspection on demand by any administrative officer, police officer or any person duly authorised in writing by the licencing authority.

Production of travelling wholesalers licence on demand.

PART VI— MISCELLANEOUS AND GENERAL PROVISIONS

35. Where a licencing authority is satisfied that any licence granted under this Act has been lost or destroyed, the licencing authority which granted the licence shall, on application made to it and on payment of the appropriate fee, issue a duplicate of the licence to the applicant.

Issue of duplicate licence.

36.(1) Subject to this Act, any holder of a licence granted under this Act, except a hawkers or travelling wholesalers licence, may make an application for the transfer of his or her licence and, on payment of the appropriate fee, the licencing authority may transfer the licence to the other person—

Transfer of licence.

- (a) in respect of the same trade; or
- (b) in respect of a trade different from that in respect of which it was originally granted.

(2) Notwithstanding subsection (1), the licencing authority may refuse to transfer a licence under this Section and shall state in writing the reason for the refusal.

(3) Any applicant who is aggrieved by the refusal of the licencing authority to transfer his or her licence may appeal to the County Executive Committee member.

37. (1) Subject to subsection (5), every person holding a licence granted under this Act shall keep or cause to be kept such books of account as are sufficient to show the true financial position of his or her trade at any time.

Books of account

(2) Any person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two thousand shillings or imprisonment for a term not exceeding three months or both.

(3) Any licencing authority or police officer of or above the rank of assistant inspector may, if satisfied that a person holding a licence granted under this Act is not complying with subsection (1), apply to a magistrate's court for an order that the books of account of that person be examined, and the court may, upon satisfaction that there are reasonable grounds for suspecting that the provisions of subsection (1) are not being complied with, make an order for the examination of the books either by

the person making the application or by some other fit and proper person appointed by the court.

(4) Where an examination of any books of account is ordered under subsection (3) and the books are kept in any language other than English, the court may order that the books shall be translated into English.

(5) Where translation has been ordered under subsection (4), the cost of translation of the books of account shall be borne by the holder of the licence.

(6) This Section shall only apply to a person holding a licence where the maximum selling value of his or her goods on hand at any time during the currency of his or her licence exceeds fifty thousand shillings.

38. (1) A person who holds a trading, hawkers or travelling wholesalers licence who is convicted of giving short change, short measure or weight, in addition to any penalty to which he or she may otherwise be liable, on a first conviction is liable to have the conviction endorsed on his or her licence by the court and on a second or subsequent conviction whether for the same or any other offence under this Act, is liable to have his or her licence revoked by the court.

Endorsement and
revocation of
licence.

(2) Where any licence is endorsed under this Section, any subsequent licence of the same kind issued to the holder of the licence shall be similarly endorsed.

39. (1) Any person who contravenes or fails to comply with any provision of this Act or with any condition of any licence issued to him or her under this Act, commits an offence and is liable on conviction, where no other penalty is specifically provided, to a fine not exceeding five hundred thousand shillings, and in addition to that penalty the court before which that person is convicted may, in its discretion, revoke any licence granted to him or her under this Act.

General penalty.

(2) Where a person charged with an offence against this Act is a body corporate, every person who, at the time of the commission of the offence, was a director or officer of the body corporate may be charged jointly in the same proceedings with the body corporate, and where the body corporate is convicted of that offence, every such director or officer shall be deemed to have committed the same

offence unless he or she proves that the offence was committed without his or her knowledge or that he or she exercised all due diligence to prevent the commission of the offence.

40. The County Executive Committee member shall, within three months after coming into force of this Act, make regulations generally to give full effect to this Act, and in particular—

Regulations.

- (a) prescribing the forms to be used under this Act;
- (b) prescribing the fees to be paid under this Act;
- (c) for the classification of any trade or class of trade in relation to any licence to be granted under this Act; or
- (d) prescribing any matter required to be prescribed under this Act.

41. (1) For purposes of determining the fees payable in any town or village, the County Executive Committee member shall, by statutory order, divide the area of any town or village into two grades.

Licence fees.

(2) Any fees collected in respect of trading licences, transfers and duplicates of those licences, shall be paid to the County Treasury.

42. The County Executive Committee member may, by statutory order, and subject to such conditions, if any, as may be specified in the order, exempt any trade or class of trades or any person or class of persons either generally or in respect of any area, from the operation of all or any of the provisions of this Act.

Exemption.

43. Nothing in this Act shall be construed so as to entitle the holder of any licence granted under this Act to sell any article or substance for the sale of which a separate licence is required by any written law for the time being in force.

Licences required under other Acts.